APPENDIX.

CENTENNIAL OF CHIEF JUSTICE MARSHALL'S APPOINTMENT.

In his message to Congress, at the beginning of the second session of the Fifty-Sixth Congress, President McKinley said: "I transmit to the Congress a resolution adopted at a recent meeting of the American Bar Association concerning the proposed celebration of John Marshall Day, February 4, 1901. Fitting exercises have been arranged, and it is earnestly desired by the committee that the Congress may participate in this movement to honor the memory of the great jurist."

Congress followed this suggestion by passing the following Concurrent Resolution:

Whereas the 4th day of February, A. D. 1901, will be generally celebrated throughout the United States as the one hundredth anniversary of the assumption by John Marshall of the office of Chief Justice of the United States; and

Whereas it is proposed that Congress shall observe the day by exercises over which the Chief Justice of the United States shall preside, and at which the President shall be present; and

Whereas a memorial praying that Congress shall so take part in honoring the memory of this great Chief Justice has been transmitted to the Congress by the President in his last annual message: Therefore

Resolved by the Senate (the House of Representatives concurring), That Congress will observe the 4th day of February next, being the one hundredth anniversary of the day when John Marshall became the Chief Justice of the Supreme Court of the United States, by exercises to be held in honor of his memory; and for that purpose a Joint Committee be appointed by the President of the Senate and the Speaker of the House

respectively to arrange said exercises, and the time and place therefor, to be participated in by the President, the Supreme Court, the Congress, and such officers of this Government and foreign governments, such members of the judiciary and of the bar, and such distinguished citizens as may be invited thereto by such committee.

"SEC. 2. That the exercises herein provided for shall be held in the Hall of the House of Representatives on said 4th day of February next, beginning at 10 o'clock A. M. and ending at 1 o'clock P. M. That the joint committee herein provided for shall consist of five members, two to be appointed by the President pro tempore of the Senate and three by the Speaker of the House of Representatives."

Chief Justice Marshall, as stated in this Joint Resolution, took his seat upon the bench as Chief Justice on the 4th day of February, 1801. In accordance with the suggestion made in the Resolution, this important event was noticed or celebrated in various parts of the country on the 4th day of February, 1901. The Reporter feels that the members of the Bar may well expect him in this volume to notice such proceedings as were participated in by a member or members of the Supreme Court of the United States. They were three in number: one held in Washington, in the Hall of the House of Representatives; one held in Richmond, Virginia; and one held at Parkersburg, West Virginia.

THE MARSHALL CENTENNIAL.

I. PROCEEDINGS IN WASHINGTON.

These proceedings were had in the Hall of the House of Representatives. The Chief Justice of the United States presided, and the President, his Cabinet, and other members of the Court and of the Senate and the House of Representatives were present. In opening the proceedings the Chief Justice made remarks which will be found below. He was followed by an address by Wayne McVeagh, Esq., delivered upon the invitation of the American Bar Association and of a Joint Committee of Congress. This address also will be found below.

REMARKS OF CHIEF JUSTICE FULLER.

The August Term of the year of our Lord eighteen hundred of the Supreme Court of the United States had adjourned at Philadelphia on the fifteenth day of August, and the ensuing term was fixed by law to commence on the first Monday of February, eighteen hundred and one, the seat of the government in the mean time having been transferred to Washington. For want of a quorum, however, it was not until Wednesday, February fourth, when John Marshall, who had been nominated Chief Justice of the United States on January twentieth by President Adams, and commissioned January thirty-first, took his seat upon the Bench, that the first session of the court in this city began.

It was most fitting that the coming of the tribunal to take its place here as an independent, coördinate department of the government of a great people, should be accompanied by the rising of this majestic luminary in the firmament of jurisprudence, to shine henceforth fixed and resplendent forever.

The growth of the Nation during the passing of a hundred years has been celebrated quite as much perhaps in felicitation over results as in critical analysis of underlying causes, but this day is dedicated to the commemoration of the immortal contri-

butions to the possibilities of that progress, rendered by the consummate intellectual ability of a single individual exerted in the conscientious discharge of the duties of merely judicial station.

And while it is essential to the completeness of any picture of Marshall's career that every part of his life should be taken into view, it is to his labors in exposition of the Constitution that the mind irresistibly reverts in recognition of "the debt immense of endless gratitude" owed to him by his country.

The court in the eleven years after its organization, during which Jay and Rutledge and Ellsworth—giants in those days—presided over its deliberations, had dealt with such of the governmental problems as arose, in a manner worthy of its high mission; but it was not until the questions that emerged from the exciting struggle of 1800 brought it into play, that the scope of the judicial power was developed and declared, and its significant effect upon the future of the country recognized.

As the Constitution was a written instrument, complete in itself, and containing an enumeration of the powers granted by the people to their Government—a Government supreme to the full extent of those powers—it was inevitable that the issues in that contest (as indeed in so many others) should involve constitutional interpretation, and that finally the judicial department should be called on to exercise its jurisdiction in the enforcement of the requirements of the fundamental law.

The President who took the oath of office administered by the Chief Justice, March 4, 1801, in his Inaugural included among the essential principles of our Government "the support of the State governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against anti-Republican tendencies;" and "the preservation of the General Government in its whole constitutional vigor, as the sheet anchor of our peace at home and safety abroad;" but it was reserved for the Chief Justice, as the organ of the Court, to define the powers and rights of each, in the exercise of a jurisdiction, which he regarded as "indispensable to the preservation of the Union, and consequently of the independence and liberty of these States."

The people, in establishing their future government, had assigned to the different departments their respective powers, and prescribed certain limits not to be transcended, and that those limits might not be mistaken or disregarded, the fundamental law was written. And, as the Chief Justice observed, "to what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time be passed by those intended to be restrained?"

The Constitution declared: "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land;" and "the judicial power shall extend to all cases, in law or equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

The judicial power was, then, in a general sense, co-extensive with the legislative power, the executive power, and the treaty-making power, and to the department created for its exercise was exclusively committed the ultimate construction of the Constitution, although that power could not be invoked save in litigated cases and could not act directly beyond the rights of the parties.

And as the rule of construction was merely a question of law, it was to be, and it was, determined and applied according to law.

The principles applicable to the construction of written documents were thoroughly settled, and in themselves exceedingly simple. Applying them to the Constitution, the Chief Justice declared that "the intention of the instrument must prevail; that this intention must be collected from its words; that its words are to be understood in that sense in which they are generally used by those for whom the instrument was intended; that its provisions are neither to be restricted into insignificance, nor extended to objects not comprehended in them, nor contemplated by its framers;" that while it was not open to dispute that an "enlarged construction which would extend words beyond their natural and obvious import," should not be indulged

in, it was not proper, on the other hand, to adopt a narrow construction, "which would deny to the Government those powers which the words of the grant, as usually understood, import, and which were consistent with the general views and objects of the instrument; that narrow construction, which would cripple the Government, and render it unequal to the objects for which it is declared to be instituted, and to which the powers given, as fairly understood, render it competent."

These were apparently plain legal rules of construction, yet in their application is to be found the basis of the National fabric; the seed of the National growth; the vindication of a written form of Government; and, simple as they now appear to be, their successful application, then, required the highest judicial qualities.

For we are to remember that there had been intense opposition to the adoption of the Constitution; that each of the Departments necessarily acted on its own judgment as to the extent of its powers; and that the operation of the sovereignty of the Nation on the powers of the States was the subject of heated partisan controversy.

To hold the balance true between these jarring poles; to tread the straight and narrow path marked out by law, regardless of political expediency and party politics on the one hand, and of jealousies of the revising power on the other; to reason out the governing principles in such manner as to leave the mind free to pursue its own course without perplexity, and to commend the conclusions reached to the sober second thought; these demanded that breadth of view; that power of generalization; that clearness of expression; that unerring discretion; that simplicity and strength of character; that indomitable fortitude; which, combined in Marshall, enabled him to disclose the working lines of that great republic, whose foundations the men of the Revolution laid in the principles of liberty and self-government, lifting up their hearts in the aspiration that they might never be disturbed, and looking to that future when its lofty towers would rise "into the midst of sailing birds and silent air."

During these first years of constitutional development in the due administration of the law, it was inevitable that bitter an-

tagonisms should be engendered, but their shafts fell harmless before that calm courage of conviction, which, perceiving no choice between dereliction of duty and subjection to obloquy, could exclaim with the Roman orator: "*Tamen hoc animo semper fui, ut invidiam virtute partam, gloriam, non invidiam, putarem.*"

And so the great Chief Justice, reconciling "the jealousy of freedom with the independence of the judiciary," for a third of a century, pursued his stately way, establishing, in the accomplishment of the work given him to do, those sure and solid principles of government on which our constitutional system rests.

The Nation has entered into his labors, and may well bear witness, as it does today, to the immortality of the fame of this "sweet and virtuous soul," whose powers were so admirable, and the results of their exercise of such transcendent consequence.

ADDRESS OF WAYNE McVEAGH, ESQ.

Mr. Chief Justice, members of the American Bar Association, ladies and gentlemen:

Today is dedicated to the law. I therefore speak to you as a lawyer; and I congratulate you that it is part of our happy fortune that the occasion which brings us together offers in itself its amplest and completest justification. It would indeed have been a grave dereliction of duty if the brotherhood of American lawyers, on the bench and at the bar, had not assembled to honor with fitting observances the centennial anniversary of the entrance by John Marshall into the office of Chief Justice of the United States.

And the place where we are assembled is of all places the most fitting for these ceremonies; for it was here, in the capital of the country he loved so devotedly and served so faithfully, that he was attended by those patient and achieving years during which his labors enrolled his name among the few immortal benefactors of mankind. It is also eminently fitting

that such an occasion should be honored by the presence of the Chief Magistrate and the members of the Cabinet, whose subjection to the law was determined by him; by the presence of members of that illustrious tribunal the vast extent of whose rightful jurisdiction was determined by him; by the presence of distinguished Senators and Representatives, representing in Congress the States whose proper and abiding place in our governmental system was determined by him; and by the presence of citizens of the country which under his forming hand, instead of becoming a dissoluble confederacy of discordant States, became a great and indissoluble nation, endowed with all the powers necessary to enable it not only to protect itself against enemies at home or abroad, but also to accept and discharge the splendid and ennobling mission which had been confided to it in the divine purpose for the education of the world, and which he recognized when first of all men he spoke of the Empire of America—that of securing to the whole American continent, "government of the people, by the people, and for the people."

The small Virginia hamlet in which John Marshall was born on the twenty-fourth day of September, 1755, is almost within sight from the noble terrace of the Capitol, and much as the world has changed, that section of Virginia has not very greatly changed since that day. His birth fell almost half way between the opening of the seventeenth century and the opening of the twentieth—midway of the three centuries which, in many important respects, of all the centuries, have been the most fruitful, the most interesting, and the most beneficent.

The first half of that stirring period of

"Change, alarm, surprise,"

witnessed what is probably the most far-reaching and certainly the most romantic drama of history—the colonization of America. The landing at Jamestown had followed the dawn of the seventeenth century by only seven years, and the Pilgrims having landed in Massachusetts in 1620 and William Penn having landed in Pennsylvania in 1683, it is reasonably accurate to consider that the essential and formative labors of the first

settlers extended over and were comprised within the hundred and fifty years preceding John Marshall's birth, and that a like period of a hundred and fifty years extends from his birth to the day on which we are assembled to do honor to his memory.

I know not how others may feel, but I have never been able to read a single page of the marvellous story of the settlement of America without an access of generous enthusiasm, and of seeming to be lifted into a purer and serener air. The men engaged in those transforming labors were fully conscious of the greatness of the work given them to do; and they addressed themselves to it as co-workers with God for the advantage, not only of themselves and their children, but of the future generations which were to rise up and call them blessed, as age after age entered upon its inheritance of the free institutions prepared for it, by the unceasing toil and the unwitnessed sacrifice, by the lonely vigil and the drear winter, by the fear of sudden massacre and the absence from all accustomed joys, by the unshed tears and by the shed blood of the first comers to these shores.

It is too often forgotten that we are in almost all essential things only their lawful heirs, and such will be our children's children to the last syllable of recorded time. We sometimes talk with dull misapprehension of our inheritance, as if the mingling here of the different nationalities of the earth was a mere accident of our own time, and as if because some of our misfortunes are traceable to it, we are privileged to deny to any less fortunate brother such opportunity to seek a home upon this free and bountiful continent as our ancestors enjoyed. The truth is that the citizenship to which John Marshall was born, with all its far-reaching opportunities and inspirations, was due to just such mingling of the blood of different races as we are now witnessing. A Jesuit father is authority for the statement that eighteen different languages were spoken in what is now the city of New York two centuries ago, and probably no greater number is spoken there today; while as early as 1761 it was declared by a very competent authority that "the diversity of peoples, religions, nations, and languages in Amer-

ica is prodigious." Certainly the Dutch, the English, the French, the Germans, the Scotch, and the Swedes, Protestants and Catholics, were all self-asserting and aggressive agencies in the era of our colonization; and each stock and each creed made contributions of the greatest possible value to the foundations of the enduring structure of our nationality. Let us, therefore, always have the faith to believe that America is the heritage, not of ourselves alone, but of mankind, destined as well as fitted to receive all who come to her, and able to ameliorate their distresses, to diminish their differences, to cultivate their self-respect, and to fuse them, in the processes of the uncounted years, into one great and free and happy people.

This vast continent of America is also charged and will, I believe, always remain charged with another mission, impressed upon it by the men who settled it—that of being the refuge and the home of a true equality and of the republican form of government. It was settled and civilized and defended by men to whom the idea of privilege was abhorrent, and to whom the sense of substantial equality of opportunity was as the very breath of their lives. If in the changing circumstances of times and seasons any of the inequalities or privileges of the old world, from which they fled to the solitude of unbroken forests and the perils of savage foes, should unhappily reappear in the new world they founded, I beg you to believe they will not long find shelter here; for this entire continent has been, in counsels wiser than ours and which we could not hope to withstand if we wished, irrevocably dedicated to the common brotherhood of man in its truest and broadest sense. M. de Tocqueville long ago rightly described the controlling spirit of the youthful nation when he declared that it was "a manly and legitimate passion for equality." That noble passion is one of the most ancient and most constant forces in civilization, and it is necessarily the inexorable foe of inequality and of privilege in all their forms. It has often been checked, often thwarted, often even defeated and overthrown; but it has had, in the end, resistless power; and it has always advanced to new and more extensive conquests. Its last and greatest conquest is the continent on which we live.

THE MARSHALL CENTENNIAL.

To properly estimate the true grandeur of character of any great man it is always necessary to understand his environment and the spirit of the age in which he lived. The vibrant and electric atmosphere, into which John Marshall was born and in which his youth was passed, was the inevitable consequence of the memories which the colonists had brought with them from the old world to the new, and of the elevating experiences of the life of adventure, of courage, of intellectual and religious fervor which they had lived. "Not many noble, not many mighty," were enrolled in their ranks. They were people of the middle class, such as we all have continued to be and, however reluctant some of us may be to admit it, we all are likely to remain. They did not primarily seek wealth, but they avoided poverty and acquired property by hard and honest toil. They came indeed "out of great tribulation," but often also out of great joy and buoyancy of spirit; and the fruits of their experiences were visible in their daily lives, illuminated as those lives were by that sublime spirit of sacrifice for conscience's sake, which in so many of their old homes had "wrought righteousness" for them and "out of weakness had made them strong."

The men who came from Sweden, from Holland, from England, from France, and from Germany, differing in many respects—in language, in habits, in dress, in manners—were agreed, as if of one blood and one creed, in the underlying principles of the Reformation, for which they and their fathers had suffered unspeakable afflictions; and they were agreed also in their common hatred of all tyranny, whether of church or king. They were an advance guard of a political Renaissance sent to take possession of the new world and to plant here that tree of liberty whose leaves should be "for the healing of the nations."

And as these different nationalities were commingled and were rapidly being fused into one people, the professors of all the different religious creeds gathered here were united in their devotion to the land which gave to each of them the right to freedom of religious worship; and when John Marshall was born the American colonists, thinly scattered along the Atlantic coast from Massachusetts Bay to Georgia, were as one people slowly marching inland to take possession of the continent,

and to establish a great nation resting upon the sublime truth—true yesterday, true today, and true forever—that "all men are created equal, that they are endowed by their Creator with certain unalienable rights, and that among these are life, liberty and the pursuit of happiness."

What followed was as inevitable as a decree of fate, although to the courtiers of the old world, its nobles and its kings, the revolt of the new world seemed like a dislocation of the order of nature. To them, in their blindness, "the world was all so suddenly changed, so much that was vigorous was sunk decrepit, so much that was not was beginning to be. Borne over the Atlantic to the closing ear of Louis, king by the grace of God, what sounds were these, new in our centuries? Boston harbor was black with unexpected tea. Behold a Pennsylvanian Congress gather; and ere long on Bunker Hill democracy, announcing in rifle volleys, death-winged, under her star banner, that she was born, and would envelope the whole world." In truth nothing in the evolution of the material world is more orderly than the evolution in history of the American Revolution and the American Union. They were the natural and inevitable results of the memories, the sufferings, the faith, and the aspirations of the early settlers. The British Crown lost its American Colonies not because of the stamp act, or the tax on tea, not because of the cynical statesmanship of Lord North or the immeasurable stupidity and stubbornness of the King. The future of the colonies was determined beyond recall when Luther defied the papal tyranny at Worms; when Egmont and Horn were beheaded at Brussels; when Hampden was mortally wounded on Chalgrove Field; when the Huguenots were massacred because they would not renounce their faith; when Lord Baltimore was persecuted for being a Catholic, and William Penn was persecuted for being a Quaker. The American colonists had been consecrated, in the eternal councils, to the old, undying struggle for civil and religious freedom and were now giving the breath of life and the spirit of liberty to the new nation which was growing, day by day, into shape and strength under the imposition of their hands. As early as the year 1765, when John Marshall was only ten years old, the citizens of the

county of Westmoreland, where his father had been born, wrote and signed a declaration setting forth the rights of the colonies. Before he was ten years older he had assisted in forming a company of volunteers to defend those rights by arms, of which company he was appointed a lieutenant; and then began the first labors of his life, labors which were destined to fill in fullest measure every obligation of a patriotic citizen, first as soldier, then as statesman, and last, and crowning all with illustrious and unfading renown, as jurist.

His career as a soldier, like all the other actions of his life, was of the most creditable character. It is quite true, as Gibbon says, that "mere physical courage, because it is such a universal possession, is not a badge of excellence, but he who does not possess it is sure to encounter the just contempt of his fellows."

In the year 1775, when he was not twenty years old, he walked ten miles from his father's house to an appointed muster field. "He was about six feet in height, straight and rather slender, with eyes dark to blackness, beaming with intelligence and good nature. He wore a plain blue hunting shirt and trousers of the same material, fringed with white, and a round black hat with a bucktail for a cockade." When the company had assembled he told them he had come "to meet them as fellow-soldiers who were likely to be called on to defend their country and their rights and liberties invaded by the British Crown; that soldiers were called for, and that it was time to brighten up their firearms and learn to use them in the field." It was thus early, in the first flush of his youthful vigor, with hope on his brow and love of country and of liberty in his heart, that he stepped across the threshold which divides youth from manhood, and began that almost unexampled career of public service which continued, with ever-increasing lustre, for sixty years, and ended only with his life.

Active military duty was soon offered him, and he doubtless accepted it with that joy of expected battle which is the common heritage of all the fighting races, and which only needs a just cause, like our Revolutionary struggle, to justify and sanctify it; but for its justification and sanctity such a cause it al-

ways, and in all quarters of the world, imperatively needs. Lieutenant Marshall was soon promoted to a captaincy, and it was on the field of Brandywine, a pastoral scene then and now as beautiful as the eye ever rested on, where Lafayette first shed his blood and Wayne won his first laurels, that John Marshall fought his first battle. He also bore an honorable part at Germantown; but it was only when the army retired to winter quarters in December, 1777, and he was appointed to act as deputy judge advocate that he came into personal relations with Washington, and began to secure that large measure of confidence and regard which thereafter steadily increased to the close of Washington's life.

The winter of 1777–1778 was one of the decisive epochs in the history of mankind. Washington commanded but a small army, often in need of food, always in need of clothing, never with adequate shelter against the bitter cold, never properly armed; but those soldiers found food and clothing and shelter and arms in the sacred fire of liberty, which burned brightly in all breasts. Their awful and appalling sufferings and sacrifices were irradiated with

"A light which never was on sea or land,"

enabling them to forecast the future and to behold, as in prophetic vision, their country taking her place among the independent nations of the earth as the result of their courage and fidelity. The words of Aristotle, which come to us across the centuries, are true of every soldier there, from the commander-in-chief to the private in the ranks: "Beauty of character shines thoroughly when one is seen bearing with patience a load of calamity, not through insensibility, but through nobleness and greatness of heart."

That was indeed a time which "tried men's souls" and tried, almost to the point of breaking, the great heart of him who bore alone the responsibility, which he could not share with any other, for the success of the war, and the maintaining of that independence which had been so bravely proclaimed. We now know something of the fortitude Washington displayed in that long and trying winter, and while we never can enter into the bit-

terness of soul he must have experienced from the cabals he discovered, the ingratitude he ignored, the calumny he withstood, the sufferings he could not prevent, we are sure he often rose to the true appreciation of the great work he was doing for us and for all men; and pacing his lonely chamber when all the camp around him was wrapped in silence and in slumber "save where on some rampart a ragged sentinel, crunching the crisp snow with bleeding feet, kept watch for liberty," he must have known it was ordained that "the gates of hell should not prevail" against him, for that was the Continental army and those were the hills of Valley Forge.

Mr. Burke tells us how an angel, lifting the curtain which hid the future from the gaze of the youthful Lord Bathurst, might have said to him, "Young man, there is America, which at this day serves for little more than to amuse you with stories of savage men and uncouth manners, yet shall before you taste death, show itself equal to the whole of that commerce which now attracts the envy of the world; and whatever England has been growing to in seventeen hundred years, you shall see as much added by America in the course of a single life."

As two Virginian youths lay sleeping in their huts that winter at Valley Forge I wonder if any such forecast of their country's future, or any forecast of their own, came to them in their dreams. Of these youths one was John Marshall, who was destined to lay broad and deep the foundations of his country's greatness, and thereby assist to secure the glory and the blessings of free institutions to untold generations of men; and the other was James Monroe, who was destined to proclaim the truth that this whole American continent, from end to end, and from sea to sea, must be regarded by all other nations as dedicated to liberty and to bequeath to us the duty of giving practical and complete effect to the noble and inspiring doctrine which bears his name.

From Valley Forge John Marshall followed the varying fortunes of Washington's command through the year 1778 and on June sixteenth, 1779, he was with General Wayne in the assault and capture of Stony Point, an achievement which

Charles Lee declared was "the most brilliant in the whole course of the war."

Immediately after the surrender at Yorktown Mr. Marshall's career as statesman began, for he had been previously elected a member of the General Assembly of Virginia, and his labors in peace were governed by the same object which inspired him as a soldier—that of moulding the colonies into one great and strong republic. His experience in the army of the evils attendant upon a divided authority, had convinced him of the necessity of one general government over all the States, possessing ample authority to insure the general safety, to promote the general welfare, and to perpetuate in peace the blessings of liberty secured by the war. He says he had imbibed these sentiments so thoroughly that they became a part of his being, and as in the army he was associated "with brave men from different States who were risking life fighting in a common cause believed by them to be the most precious, I was in the habit of considering America as my country and Congress as my government." From that habit he never departed to the last hour of his life.

The brilliancy, the wisdom, and the enduring value of his contributions to the welfare of his country as Chief Justice have naturally diverted attention from his valuable and fruitful labors as a statesman, but those labors ought never to be forgotten, as they help to exhibit in its true proportions that consistency of opinion which made him, from first to last, such a powerful factor on the side of liberty and Union. He was reelected to the State legislature in 1784 and again in 1787, and in the following year he was chosen a member of the convention called to reject or to ratify the Constitution of the United States. This last election clearly resulted from his personal popularity, as not only the State of Virginia, but also the county of Henrico, which elected him, was opposed to the adoption of the Constitution. He had always been the earnest advocate of its adoption, and he was "eminently fitted by his character and temper to secure without solicitation, and to retain without artifice, the public esteem. His placid and genial disposition, his singular modesty, his generous heart, his kindly and unpre-

tentious manners, the scrupulous respect he showed for the feelings of others, his freedom from pride and affectation, his candor, and his integrity, conciliated the confidence and fixed the regard of his fellow-men."

The convention, in which he was to display these qualities for the advantage of his country, met at Richmond the second day of June, 1788, and presented an assemblage of men rarely if ever surpassed in the qualities most honored in deliberative assemblies, the qualities of eloquence, experience, and character. Among its members were Patrick Henry and George Mason, Edmund Pendleton and James Madison, Edmund Randolph, George Nicholas, and Henry Lee. It was in such company that John Marshall, by the massive strength of his great arguments on behalf of the Union and the Constitution, succeeded in securing victory for them while extorting from his earnest and eloquent opponents extraordinary tributes of respect and regard.

Mr. Marshall was, throughout Washington's administration, its thorough and earnest supporter, and notwithstanding the almost universal unpopularity of the treaty Mr. Jay had negotiated with England, Mr. Marshall fearlessly advocated its ratification, demolishing, once for all, in a profound legal argument before the people of Richmond, the proposition that the Constitution, in giving Congress the power to regulate commerce, denied to the President the right to negotiate a commercial treaty. He was again elected to the General Assembly in 1795, and on the thirty-first day of May, 1797, was appointed one of the three special envoys President Adams was sending to France in the hope of preserving peace with that country, while maintaining the dignity and honor of his own. The sordid nature of the negotiations of the Directory, conducted through Talleyrand and his agents, was fully exposed, when it was shamelessly declared by them that to maintain peace it was "necessary to pay money—a great deal of money," and to this demand the true American answer was given at the banquet tendered Mr. Marshall on his return from his mission by members of the Congress then sitting at Philadelphia:

"Millions for defence, but not a cent for tribute."

His bearing through all the painful and disagreeable experiences of this mission justified the message Patrick Henry sent him: "Tell Marshall I love him because he acted as a republican and as an American." Those were indeed the two guiding and controlling convictions of his whole life—he was always an ardent republican and he was always an ardent American; and his masterly conduct of the negotiations with the Directory is another striking instance of the truth that, since this country became a nation, no other country has been as wisely and successfully served by its diplomatic representatives as the United States. Of Mr. Marshall's conduct of those negotiations President Adams declared: "It ought to be marked by the most decided approbation of the public. He has raised the American people in their own esteem; and if the influence of truth and justice, reason and argument, is not lost in Europe, he has raised the consideration of the United States in that quarter."

Mr. Marshall's next public service was as a member of the last Congress which sat in Philadelphia, meeting in December, 1799, and which body, so competent a judge as Horace Binney has declared, "was perhaps never excelled in the number of its accomplished debaters or in the spirit for which they contended for the prize of the public approbation." In announcing the death of Washington, Mr. Marshall seems to have anticipated in some degree the doctrine afterwards associated with the name of President Monroe. He declared that "Washington was the hero, the patriot, and the sage of America, and that more than any other agency he had contributed to found his wide-spreading Empire, and to give to the Western World independence and freedom."

However improbable such an occurrence may now appear, it is undoubtedly true that Mr. Marshall changed the current of opinion upon a grave constitutional question by a speech in Congress, although it is true that his argument in the Robbins case so far from being an ordinary speech in debate has all the merit and nearly all the weight of a judicial decision. It separates the executive from the judicial power by a line so distinct and a discrimination so wise that all men can understand and approve it. He demonstrated that, under the circumstances, the sur-

render of Robbins to the British authorities was an act of political power, which belonged to the executive department alone; and before the session closed he was privileged to teach his associates as well as his successors in Congress, by a striking example, how, when the convictions of the individual conscience conflict with the behests of party, a true patriot will follow the former, in utter disregard of party discipline, and of possible calamitous consequences to his future political advancement. Although a strong supporter of President Adams' administration, Mr. Marshall voted without hesitation, contrary to the earnest desire of the president and in direct opposition to all those with whom he was in general political accord. Believing that the second section of "The Alien and Sedition Laws" ought to be repealed, he voted accordingly, and it has long since been universally acknowledged that he was right. Among other lessons he had learned from Washington was this: "The spirit of party unfortunately is inseparable from our nature, having its root in the strongest passions of the human spirit, but in governments of the popular form it is seen in its greatest rankness and is truly their worst enemy."

So far from Mr. Marshall's independence of party having estranged President Adams he very soon afterwards appointed him Secretary of State, and the duties of this important office he discharged with the same wisdom and firmness he had displayed in all other public stations. The right then asserted by both France and Great Britain, while at war with each other, to interfere in our affairs and to compel us to ally ourselves with the one or the other of the combatants, was denied in a dispatch which will always hold high rank among the important state papers of America. He said: "The United States do not hold themselves in any degree responsible to France or to Great Britain for their negotiations with one or the other of those powers. The aggressions sometimes of the one and sometimes of the other have forced us to contemplate and prepare for war. We have repelled, and will continue to repel, injuries not doubtful in their nature and hostilities not to be misunderstood." With this clear and vigorous statement of the true position of his country he closed his career as a statesman.

He must have found that career singularly interesting and fruitful. In the legislature of his native State; in its constitutional convention; in the special mission to the French Directory; as a member of Congress, and as Secretary of State, he had been brought into association with almost every member of that great galaxy of statesmen to whose wisdom, integrity and patriotism we are indebted for the priceless blessings of liberty and union which we now enjoy, and those associations had undoubtedly broadened and widened and deepened his opinion of the true character of the National Government, and assisted to give to his judgments that stately impress, alike of consistency and of conclusiveness, which they maintained to the end.

On the 4th day of February, 1801, just a hundred years ago, he took his seat as Chief Justice of the Supreme Court of the United States. Soldier he had been and statesman, and now for the rest of his life he was dedicated to the administration of the law. Fortunately he came to this great office, which is among the greatest possible to be held by man, in the full maturity of his intellectual powers, and admirably equipped to meet every demand which might be made upon him. He was first of all a thorough lawyer, thoroughly well grounded in legal principles, and thoroughly familiar with the decisions of the courts in England and at home, and possessed of the incalculable advantage of having tried and argued many unimportant, as well as many important causes; for he had been engaged in active, laborious, and miscellaneous practice at the bar for twenty years. His public duties, with the one exception of his brief special mission to France, had not withdrawn him from the scene of his professional labors, or seriously interfered with his devotion to them. He had risen rapidly at the bar, for the legal questions then to be discussed were novel in their character and counsel in the argument of such causes were obliged to reason from general principles and seek to apply considerations of abstract justice, so that the needs of the time and the character of his mind were in most happy accord. He had enjoyed the advantage of practicing for several years at the bar of Fauquier county and in the adjacent counties, where he had acquired not only a considerable practice, but also that familiarity with

the different branches of the law and their practical application which is far more slowly and far less easily attained in a city. When, therefore, he removed to Richmond it is not surprising that he rapidly advanced to the position of the acknowledged leader of its bar. The secret of his success was explained by Mr. Wirt: "This extraordinary man, without the aid of fancy, without the advantages of person, voice, attitude, gesture, or any of the ornaments of the orator, deserves to be considered one of the most eloquent men in the world, if eloquence may be said to consist in seizing the attention with irresistible force and never permitting it to elude the grasp until the hearer has received the conviction which the speaker intends. He possesses one original and almost supernatural faculty, the faculty of developing a subject by a glance of his mind and detecting at once the very point on which every controversy depends."

The services of such an advocate were sure to be in great request, and the Duc de Liancourt, in his "Travels in America," speaks of him as being "the most esteemed and celebrated counsellor" at the Richmond bar; and it was from his acknowledged leadership of that bar that he was appointed to be Chief Justice of the United States.

I have dwelt upon these steps of his advance from his admission to the bar in 1781 to his national reputation as an eminent lawyer in 1801, because it has always seemed to me there was danger of overlooking his rank at the bar, at the time of his appointment, because of the inestimable value of his services on the bench where for more than thirty years he proclaimed and established the true canons of construction to be applied to the Constitution.

It is hardly possible for us at the beginning of the century just opening to appreciate the difficulties and the dangers which confronted the nation at the beginning of the century which has just closed. We are now secure of citizenship in a great, powerful and free nation, whose authority upon all questions affecting the national welfare is subject only to such constitutional limitations as the sovereign people have imposed. We are, in very sober truth, rich in resources beyond the dreams of any visionary, with all the material blessings the heart of man

can desire, clad in full panoply for peace or war, and enjoying a moral leadership of all the nations of this vast and undeveloped continent, which is destined soon to be the home of hundreds of millions of people of all creeds and of all races, blended and fused into a peaceful confederacy of American republics. How different was the outlook a hundred years ago! A small and scattered population was then slowly making its way from the Atlantic coast into the wilderness of the valley of the Ohio, and thereby separating itself by the almost impassable barrier of the Alleghanies from the settlements on the seaboard. The Constitution, as well as the Government created by it, was only twelve years old, and in that brief period eleven amendments of its provisions had been found to be necessary. A general distrust existed of its wisdom, and in many States there was an active and bitter hostility to it, magnifying its few imperfections and denying its manifold and transcendent merits. Party spirit, then as ever since our greatest peril, exulted in the prospect that it would soon be apparent that the Constitution was incapable of solving the almost insoluble problem, of reconciling the rights of thirteen self-governing and independent communities, each differing in many respects from every other, with such sovereignty in the General Government as was indispensable to the perpetuity of the free institutions confided by the fathers to its sheltering care, in those noble and memorable words graven by them, as with a pen of iron, over the entrance to the sources of the fundamental law, and which cannot be too often repeated, in which they declared that the Constitution was "ordained to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity."

The new nation stood at a parting of the ways, divided as in twain by two great contentions, each supported by names of imposing weight and authority, one party insisting that the National Government was a sovereign nation created by the people of the United States and subject as such sovereign nation only to the limitations of the Constitution,—limitations which the people had imposed and which they alone could alter or

remove. The other party insisted that the National Government was merely the accredited agent of thirteen independent sovereignties, which had delegated to such agent certain strictly defined powers which the States were at liberty to abrogate or withdraw, at their own good will and pleasure.

It is now universally realized that the decision of the question thus distinctly put in issue was one of the most important ever submitted to human judgment; and if it is regarded as an accident that at such a crisis in the history of free institutions John Marshall was chosen to be Chief Justice of the Supreme Court of the United States, then chance was as wise and far-seeing as any divine guidance of the nation could have been. It is true that it was an era of great statesmen and of great lawyers, broad-minded, high-hearted men, true patriots if ever such there were. We know them now possibly better than if we had lived with them, as we linger lovingly and proudly over the minutest details of their daily lives, but we know that among them all the fittest man for the great and enduring work then needing to be done was the man who was summoned to do it. Mr. Webster wrote of him years afterwards, "I have never seen a man of whose intellect I have a higher opinion," and his intellect never served him to better purpose than when he declared the wise and moderate doctrine that the Constitution should not have either a strict or a liberal construction, but one giving the natural and ordinary effect to its words. He said: "The intention of the instrument must prevail. This intention must be gathered from its words. Its words are to be understood in that sense in which they are generally used by those for whom the instrument was intended, and those provisions are neither to be restricted into insignificance nor extended to objects not comprehended in them, nor contemplated by its framers."

To those memorable words are to be added these others equally memorable: "That this court dares not usurp power is most true. That this court dares not shrink from its duty is not less true;" and these declarations guided him, as with beacon lights, through his entire judicial career. Of these propositions no criticism could really be offered, nor from them was

any appeal to either passion or prejudice possible. They enabled the Chief Justice to rear upon them that enduring structure of the true meaning of the Constitution which is among the most priceless possessions of our inheritance, and which will enable coming generations to enjoy our privilege of living under a government of liberty regulated by law.

Soon after Mr. Marshall's entrance upon the duties of Chief Justice the Supreme Court was confronted with one of the most important questions ever submitted to any tribunal for decision: Was the extent and scope of the limitations the Constitution imposed upon the authority of the legislative department of the Government of the United States to be determined by its judicial department? Might the latter declare null and void, as in conflict with such limitations, a law deliberately enacted by the former? Many strong reasons existed for supposing this could not have been intended. One was because all legislative authority was expressly vested in Congress. Another was because the members of Congress represented the people and held direct and explicit mandates from them, renewed at briefly recurring intervals, to enact such laws as they judged to be wise and necessary. On the contrary, the justices of the Supreme Court were the nominees of the President, and enjoyed tenure of office during their lives. The assertion that the latter were at liberty to annul and set aside the legislation enacted by the former seemed to many ardent and sincere patriots a proposition destructive of the division of the powers of the government into three departments of coördinate dignity and authority. But listen to the calm and resistless strength with which the Chief Justice established on impregnable foundations the true doctrine: "The question whether an act repugnant to the Constitution can become a law of the land is a question deeply interesting to the United States but happily not of an intricacy proportioned to its interest. If an act of the legislature repugnant to the Constitution is void, does it notwithstanding its invalidity bind the courts and oblige them to give it effect? Or in other words, though it be not a law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory and would

seem at first an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration. It is emphatically the province and duty of the judicial department to say what the law is. If two laws conflict with each other the courts must decide on the operation of each. So if a law be in opposition to the Constitution, if both the law and Constitution apply to a particular case, so that the court must either decide that case conformably to the law disregarding the Constitution, or conformably to the Constitution disregarding the law, the court must determine which of these conflicting rules governs the case. That is of the very essence of judicial duty. If then the courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply."

In deciding that the judicial authority of the court extended to the issuing of process to the President he settled for all time the subjection of the head of the executive department to the law; and he effectually disposed of the argument that as the King of Great Britain was not subject to such process the President of the United States ought not to be, by saying:

"Of the many points of difference which exist between the first magistrate of England and the first magistrate of the United States, in respect to the personal dignity conferred on them by the Constitutions of their respective nations, the court will only select two. It is a principle of the English Constitution that the King can do no wrong; that no blame can be imputed to him; that he cannot be named in debate. By the Constitution of the United States the President as well as every other officer of the Government may be impeached and may be removed from office for high crimes and misdemeanors. By the Constitution of Great Britain the crown is hereditary and the monarch can never be a subject. By the Constitution of the United States the President is elected from the mass of the people and on the expiration of the time for which he is elected, he returns to the mass of the people again."

By a course of reasoning equally irresistible he subjected the lawfulness of the ministerial acts of members of the Cabinet to

the decision of the courts: "The Government of the United States has been emphatically termed a government of laws and not of men. It will certainly cease to secure this high appellation if the laws furnish no remedy for the violation of a vested legal right. The very essence of civil liberty consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection. By the Constitution of the United States the President is invested with certain important political powers, in the exercise of which he is accountable to his country in his political character and to his own conscience. To aid him in the performance of those duties he is authorized to appoint certain Cabinet officers, and so long as the subjects of their action are political, there exists no power to control their discretion, which is the discretion of the President. But when Congress imposes upon a Cabinet officer other duties and directs him to perform certain acts, when the rights of individuals are dependent on the performance of those acts, he is so far the officer of the law; is amenable to the law for his conduct; and cannot at his discretion sport away the vested rights of others."

Mr. Justice Story tells us that these epoch-making judgments were "the results of his own unassisted meditations." They established upon a basis which can never be successfully assailed that both the legislative and executive departments were subject to the law, which is the only enduring basis of government in the democratic ages. If the law could lay no restraining hand upon Congress, Congress would be a despotism. If the law could lay no restraining hand upon the President and the members of his cabinet, they would be despots. It is because neither the President nor Congress, nor the highest nor the humblest citizen of the land, is either above the restraints, or beneath the protection, of the law that ours is destined to be the final form of government, as notwithstanding all its defects, it is by far the best form of government under which men have ever been permitted to live. For of law in its widest sense, including the processes of evolution, not only in the material universe, but in the moral and spiritual universe as well, the familiar words of Hooker are always true: "There can be no less acknowledged

than that her seat is the bosom of God, her voice the harmony of the world. All things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempt from her power."

The other labors of Chief Justice Marshall, in giving definite form and meaning to the provisions of the Constitution, were only comparatively less difficult and important; and we must not lessen our gratitude to him by failing to appreciate the gravity of those decisions and their steadily increasing influence in our national life. "We admit," he said, "as all must admit, that the powers of the Government are limited and are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion with respect to the means, by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

Having settled the undoubted right of Congress to determine, in its unfettered discretion, what means were necessary to give effect to the powers the Constitution conferred upon it, he next addressed himself to securing for the means thus employed absolute freedom from interference by the authority of any State. He said that while there was no express provision on the subject the proposition rested "on a principle which so entirely pervades the Constitution, is so intermixed with the materials which compose it, so interwoven with its web, so blended with its texture, as to be incapable of being separated from it without rending it into shreds. If the States may tax one instrument employed by the General Government they may tax all the means employed by it, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their Government dependent on the States. The question is indeed a question of supremacy. The court has bestowed on the sub-

ject its most deliberate consideration. The result is a conviction that the States have no power by taxation or otherwise to retard, impede, burden, or in any manner control the operation of the constitutional laws, enacted by Congress, to carry into execution the powers vested in the General Government. This is, we think, the inevitable consequence of that supremacy which the Constitution has declared."

His next great step forward was to withdraw the obligations of contracts from the power of the State legislatures to impair their validity, and to place them also beneath the protecting ægis of the Constitution. He said: "This court can be insensible neither to the magnitude nor to the delicacy of this question. The validity of a legislative act is to be examined, and the opinion of the highest law tribunal of a State is to be revised. But the American people have said, in the Constitution of the United States, that no State shall pass any law impairing the obligation of contracts. In the same instrument they have also said that the judicial power shall extend to all cases, in law and equity, arising under the Constitution. On the judges of this court is imposed the solemn duty of protecting, from even legislative violation, those contracts which the Constitution of our country has placed beyond legislative control; and, however irksome the task may be, this is a duty from which we dare not shrink."

It is now recognized that one of his greatest services to his country was in withstanding a wave of great popular excitement, shared and fostered by President Jefferson himself, and declaring the true doctrine of the Constitution to be, that no man can be convicted of treason against the United States unless he is proven by the testimony of two witnesses, to the same overt act, of levying war against the nation, or of adhering to its enemies. In discharging this grave duty he recognized fully the obloquy to which he was exposing himself. "No man," he said, "is desirous of becoming the peculiar subject of calumny. No man, might he let the bitter cup pass from him without self-reproach, would drain it to the bottom. But if he has no choice in the case, if there is no alternative presented to him but a dereliction of duty, or the opprobrium of those

who are denominated the world, he merits the contempt as well as the indignation of his country, who can hesitate which to embrace."

In the years to come it will probably be recognized that among his decisions none will surpass in permanent material advantage that decision which determined that the power to regulate commerce resided exclusively in Congress and must be kept inviolate from any intrusion by the States, under any guise whatsoever. He refused to admit that any rights possessed by the States may be used so as to obstruct the free course of a power given to Congress. "We cannot admit," he said, "it may be used so as to obstruct or defeat the power to regulate commerce. It has been observed that the powers remaining with the States may be so exercised as to come in conflict with those vested in Congress. When this happens that which is not supreme must yield to that which is supreme. This great and universal truth is inseparable from the nature of things, and the Constitution has applied it to the often interfering powers of the general and state governments as a vital principle of perpetual obligation. No power of legislation in the States can be allowed to restrain or interfere with any law which Congress may constitutionally pass,—it cannot interfere with any regulation of commerce."

I have felt it was due to this great jurist to allow him to state his conclusions, as expounder of the Constitution, in his own clear and persuasive language. For more than half a century the principles vindicated by him in these decisions "have borne the keen scrutiny of an enlightened profession and the sharp criticism of able statesmen, but they remain unshaken. All the judges who concurred in them have descended long since into honored graves, but these judgments endure, and gathering vigor from time and general consent" have acquired the force of constitutional sanctions. It is not too much to say that he found his country drifting rudderless without chart or compass, and he left it with its course as definite and certain as that of the fixed stars in their courses, and invested with all the sovereign powers necessary to a great nation.

In these historic and enduring labors let us never forget that the court, consisting of himself and his able, learned, and patriotic associates, enjoyed the assistance of a bar of unusual eloquence and ability. As we recall them our minds are filled with admiration of their great intellectual powers and of their absolute fidelity to the court, which it was at once their privilege and their duty to advise and to instruct. In those arduous labors of evolving, year by year, the true strength and grandeur of the Constitution we must never forget the part borne by the bar,—among others by Wirt, and Dallas and Dexter, by Pinckney and Ogden and Mason, by Binney and Sergeant, by Livingston and Wheaton, by Martin and Rodney and Rawle, by Taney and by Webster; and the reciprocal confidence, regard, and affection which existed between the bench and the bar in those memorable years of our judicial history should never be forgotten. It was only such an atmosphere which could have emboldened Mr. Wirt to indulge in flights of imagination when addressing the judges; and it was not only with courteous attention but with an entire appreciation of their beauty that the court listened to him when during the trial of Burr he described, in his vivid imagery, the startling change in the nature of Blennerhassett from his not permitting the winds of summer to visit his wife too roughly to allowing her "to shiver at midnight on the banks of the Ohio, and mingle her tears with the torrents that froze as they fell."

The Chief Justice has himself told us of the enjoyment of the court of Mr. Pinckney's argument in the case of the *Nereide:* "With a pencil dipped in the most vivid colors and guided by the hand of a master, a splendid portrait has been drawn of a single figure, composed of the most discordant materials of peace and war. The skill of the artist was exquisite—the garb in which the figure was presented was dazzling."

During Mr. Webster's argument on behalf of Dartmouth College he faltered and said: "It is, as I have said, a small college—and yet there are those who love it;" and here the feelings which he had thus far succeeded in keeping down broke forth. Every one saw it was wholly unpremeditated—a pressure on his heart which sought relief in tears. "The court-room

during those two or three minutes presented an extraordinary spectacle. Chief Justice Marshall, with his tall and gaunt figure, bent over as if to catch the slightest whisper. Mr. Justice Washington also leaned forward with an eager, troubled look, and the remainder of the court pressed as it were towards a single point."

It is quite apparent, from these instances, that the conception of Chief Justice Marshall of the dignity of his great office in no manner interfered with his appreciation of the assistance to be derived from the arguments of counsel, or of his enjoyment of their eloquence. His own lofty standard of the judicial character was, however, never relaxed. In the closing years of his life, as a member of the convention called to revise the constitution of his native State, he said: "I have always thought, from my earliest youth till now, that the greatest scourge an angry heaven ever inflicted upon an ungrateful and a sinning people was an ignorant, a corrupt or a dependent judiciary. Our ancestors thought so, we thought so until very lately, and I trust the vote of this day will show we think so still, and that we will not draw down this curse upon Virginia."

Let us fervently hope no such curse may ever be drawn down upon the United States. In a popular government like ours resting upon manhood suffrage, the forces of the reserve in the army of civilization must always be the judicial tribunals. It is upon them as our only refuge in the days of evil fortune that our rights to property, to liberty, and to life must in the last resort depend, and as long as the plain people have undiminished confidence in the integrity and impartiality of their judges, those rights will be secure, but no longer.

Shortly before his death, in reply to an address from the bar of Philadelphia, declaring that he had "illuminated the jurisprudence of his country and enforced with equal mildness and firmness its constitutional authority," the Chief Justice replied, with his unvarying modesty, that "if he might be permitted to claim for himself any part of their approval, it would be that he had never sought to enlarge the judicial power beyond its proper bounds, nor feared to carry it to the fullest extent that

duty required"—thus firmly maintaining to the end the two guiding principles with which he began his judicial career.

And now at last the long and spotless record of labor, of honor, and of life was completed, and in Philadelphia, on the sixth day of July, 1835, John Marshall entered into rest. It is impossible to describe the impression which his death produced. It was not that feeling which the death of a public man in an ordinary sense of the word produces, which stirred the hearts of the people,—"it was a better, a purer and more tranquil sentiment,"—a mingled feeling of gratitude for the past and of security for the future.

The bar of Richmond has left an enduring record of their appreciation of him, and of their veneration for him, which seems to me the best portrait of a perfect judge ever drawn. They declared that he was "never absent from the bench in term time even for a day; that he displayed such indulgence to counsel and suitors that everybody's convenience was consulted but his own; that he possessed a dignity sustained without effort, and apparently without care to sustain it, to which all men were solicitous to pay due respect; that he showed such equanimity, such dignity of temper, such amenity of manners that no member of the bar, no officer of the court, no juror, no witness, no suitor, in any single instance, ever found or imagined, in anything said, or done, or omitted by him, the slightest cause of offence." They added that "his private life was worthy of the exalted character he sustained in public station, and that the spotless purity of his morals, his social, gentle, cheerful disposition, his habitual self-denial and his boundless generosity towards others, caused him to be, highly as he was respected, yet more beloved."

He had indeed completed the circle of a good man's duty as husband and father, as citizen and soldier, as statesman and jurist; and he has left to all the coming generations of his countrymen an inspiring example of a happy union of wisdom and virtue and patriotism. Two generations of American citizens have come and gone since the nation stood by his open grave, and if we had not profited as we ought to have done by the lessons of his life, we have not wholly failed to realize

the lofty ideals he cherished for us. We are in a far greater degree than he foresaw a powerful, prosperous and united people, loyally accepting his construction of the fundamental law as the source of the national life and still venerating the Constitution in his own measured words, as "a sacred instrument;" and we have lived to see diffused through all sections of our country and among all classes of our countrymen such generous measures of political equality, of social freedom, and of physical comfort and well-being as were never dreamed of on the earth before.

But while our hearts are full of gratitude for these unexampled material blessings, let us, on this day of all days, when the memories of the fathers cluster so closely about us, acknowledge, as they always acknowledged, that nations cannot live by bread alone. It was because of such conviction that they cherished, and we have heretofore cherished, the Christian ideal of true national greatness; and our fidelity to that ideal, however imperfect it has been, entitled us in some measure to the divine blessing, for having offered an example to the world for more than an entire generation of how a nation could marvellously increase in wealth and strength and all material prosperity while living in peace with all mankind. And although many good and thoughtful people are just now greatly troubled at what seems to them an evil promise of the future, we must never for a moment, in dark days or in bright, despair of the republic. Differences of opinion may well exist as to the best methods of discharging the grave and serious duties unexpectedly devolved upon us by a war begun with the noble object of helping a struggling people to secure their independence; but let us trust that however we may differ as to methods we all believe that the true glory of America and her true mission in the new century, as in the old, is what a great prelate of the Catholic Church has recently declared it to be: to stand fast by Christ and his gospel; to cultivate not the Moslem virtues of war, of slaughter, of rapine, and of conquest, but the Christian virtues of self-denial and kindness and brotherly love, and that it is our mission, not to harm but to help to a better life every fellow-creature of whatever color and however weak or lowly; and then we may some day hear the benediction: "Inas-

much as ye did it to one of the least of these my brethren ye did it unto me."

The passing years bring with them great compensations, and among them is a serenity of judgment which enables us to recognize as literal practical truth that, however we may strive to persuade ourselves to the contrary, no nation ever has gathered or ever will gather grapes of thorns or figs from thistles; and, as the sense of separation of the world in which we are from the world whither we are going lessens day by day, we come at last to believe with a faith which never can be shaken that the true mission of nations as of men is to promote righteousness on earth; that conferring liberty is wiser than making gain; that new friends are better for us than new markets; that love is more elevating than hatred; that peace is nobler than war; that the humblest human life is sacred; that the humblest human right should be respected; and it is only by recognizing these truths, which can never fail to be true, that our own beloved country can worthily discharge the sacred mission confided to her and maintain her true dignity and grandeur, setting her feet upon the shining pathway which leads to the sunlit summits of the olive mountains and taking abundant care that every human creature beneath her starry flag, of every color and condition, is as secure of liberty, of justice and of peace as in the Republic of God.

In cherishing these aspirations and in striving to realize them, we are wholly in the spirit of the great Chief Justice; and we can in no other way so effectually honor his memory as by laboring in season and out of season to make this whole continent of America "one vast and splendid monument, not of oppression and terror, but of wisdom, of peace and of liberty, on which men may gaze with admiration forever."

II. PROCEEDINGS IN RICHMOND.

At the request of the State Bar Association of Virginia, and of the Bar Association of the City of Richmond, an address on the Life, Character and Influence of Chief Justice Marshall was delivered at Richmond on the 4th day of February, 1901, by Mr. Justice Gray of the Supreme Court of the United States.

ADDRESS OF MR. JUSTICE GRAY.

Gentlemen of the Bar of the Commonwealth of Virginia, and of the City of Richmond:

One hundred years ago to-day, the Supreme Court of the United States, after sitting for a few years in Philadelphia, met for the first time in Washington, the permanent capital of the Nation; and John Marshall, a citizen of Virginia, having his home in Richmond, and a member of this bar, took his seat as Chief Justice of the United States.

In inviting a citizen of another ancient Commonwealth to take part in your commemoration of that epoch in our national history, by addressing you on the Life, Character and Influence of Chief Justice Marshall, you have been pleased to mention that it was President John Adams, of Massachusetts, who gave Chief Justice Marshall to the Nation, and that I am a citizen of Massachusetts and a member of the court over which Chief Justice Marshall presided; and to refer to the most cordial relations formerly existing between your State and my own, now happily restored, and, as we all trust, being reëstablished in a closer degree.

Heartily reciprocating your kindly sentiments, and deeply touched in my inmost feelings and convictions, your invitation has had the force of a summons that could not be gainsaid.

Permit me, in this connection, to recall one or two allusions by Marshall himself to the sympathy which existed between

Virginia and Massachusetts in the trying times of the Revolutionary War and of the Continental Congress.

In the earliest known speech of his, (as described by a kinsman who heard it,) made in May, 1775, when he was under twenty years old, upon assuming command as lieutenant of a company of the Virginia militia, he told his men "that he had come to meet them as fellow-soldiers, who were likely to be called on to defend their country, and their own rights and liberties invaded by the British; that there had been a battle at Lexington in Massachusetts, between the British and Americans, in which the Americans were victorious, but that more fighting was expected; that soldiers were called for, and that it was time to brighten their fire-arms, and learn to use them in the field."

Many years afterwards, in a letter to a friend, (quoted by Mr. Justice Story, to whom it was perhaps addressed,) he wrote: "When I recollect the wild and enthusiastic notions with which my political opinions of that day were tinctured, I am disposed to ascribe my devotion to the Union, and to a government competent to its preservation, at least as much to casual circumstances, as to judgment. I had grown up at a time when the love of the Union, and the resistance to the claims of Great Britain, were the inseparable inmates of the same bosom; when patriotism and a strong fellow-feeling with our suffering fellow-citizens of Boston were identical; when the maxim, 'United we stand; divided we fall,' was the maxim of every orthodox American. And I had imbibed these sentiments so thoroughly, that they constituted a part of my being. I carried them with me into the army, where I found myself associated with brave men from different States, who were risking life and everything valuable in a common cause, believed by all to be most precious; and where I was confirmed in the habit of considering America as my country, and Congress as my government."

Before the adoption of the Constitution, one of the chief defects in the government of the United States was the want of a national judiciary, of which there was no trace other than in the tribunals constituted by the Continental Congress, under powers specifically conferred by the Articles of Confederation,

for the decision of prize causes, or of controversies between two or more States.

Among the objects of the Constitution, as declared in the preamble, the foremost, next after the paramount aim "to form a more perfect Union," is to "establish justice." It ordains that the judicial power of the United States shall be vested in "one Supreme Court," and in such inferior courts as Congress may from time to time establish; that the judicial power shall extend to "all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority," and to other classes of cases specified; that the Supreme Court, in cases affecting ambassadors, public ministers and consuls, or to which a State shall be party, shall have original jurisdiction; and, in all the other cases before mentioned, shall have appellate jurisdiction, with such exceptions and under such regulations as Congress shall make; and that "this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

On the 24th of September, 1789, the first Congress under the Constitution passed the Judiciary Act, which had been framed by Oliver Ellsworth, then a Senator from Connecticut. That act has always been regarded as a contemporaneous construction of the Constitution; and, with some modifications, remains to this day the foundation of the jurisdiction and practice of the courts of the United States. It provided that the Supreme Court should consist of a Chief Justice, and of five Associate Justices who should have precedence according to the date of their commissions; established the Circuit and District Courts; defined the jurisdiction, original and appellate, of all the Federal courts; and empowered the Supreme Court to reëxamine and reverse or affirm, on writ of error, any final judgment or decree, rendered by the highest court of a State in which a de-

cision in the case could be had, against a right claimed under the Constitution, laws or treaties of the United States.

President Washington, on the very day of his approval of that act, nominated John Jay, of New York, as Chief Justice; and John Rutledge, of South Carolina, William Cushing, of Massachusetts, Robert H. Harrison, of Maryland, James Wilson, of Pennsylvania, and John Blair, of Virginia, as Associate Justices of the Supreme Court; and the nominations were all confirmed by the Senate on the 26th of September. The commissions of Chief Justice Jay and Mr. Justice Rutledge were dated on that day, and those of the other Justices on successive days, in the order above named, thus determining their precedence. President Washington, in a letter to each of the Associate Justices, informing him of his appointment, remarked, "Considering the judicial system as the chief pillar upon which our National Government must rest;" and in a letter to the Chief Justice, enclosing his commission, said that the judicial department "must be considered as the keystone of our political fabric."

During the first twelve years of the Supreme Court, there were frequent changes in its membership: three by the appointees preferring high offices in the governments of their several States; three others by resignation; one by rejection by the Senate; and two by death.

Rutledge never sat in the Supreme Court as Associate Justice, and in 1791 resigned the office to accept that of Chief Justice of South Carolina. Harrison declined his appointment, preferring to become Chancellor of Maryland. James Iredell, of North Carolina, was appointed in 1790, in the stead of Harrison; and Thomas Johnson, of Maryland, in 1791, in the place of Rutledge. The other Associate Justices before 1801 were two appointed by President Washington: William Paterson, of New Jersey, in 1793, in the place of Thomas Johnson, resigned; and Samuel Chase, of Maryland, in 1796, upon the resignation of Blair; and two appointed by President John Adams: Bushrod Washington, of Virginia, in 1798, upon the death of Wilson; and Alfred Moore, of North Carolina, in 1799, upon the death of Iredell.

THE MARSHALL CENTENNIAL.

President Washington, in his eight years of office, appointed four Chief Justices of the United States; John Jay in 1789; John Rutledge in 1795; William Cushing and Oliver Ellsworth in 1796. Jay held the office for about five years and nine months; and for the first six months of that time, by the President's request, also acted as Secretary of State. Ellsworth held the office of Chief Justice a little more than four years and a half. But Jay, as well as Ellsworth, during the whole of his last year, ceased to perform his judicial duties, by reason of being employed on a diplomatic mission abroad. Rutledge, after sitting as Chief Justice for a single term, was rejected by the Senate; and Cushing, though confirmed by the Senate, declined the appointment, and remained an Associate Justice until his death in 1810. Ellsworth resigned in 1800, owing to ill health; and Jay resigned in 1795 to accept the office of Governor of the State of New York, and in 1800, towards the close of his second term of office as Governor, being in a depressed condition of health and spirits, and having finally decided to retire from public life, declined a reappointment as Chief Justice, offered him by President Adams on the resignation of Ellsworth.

John Marshall, then Secretary of State, was nominated as Chief Justice of the United States by President Adams on the 20th, confirmed by the Senate on the 27th, and commissioned on the 31st of January, 1801.

His characteristic letter of acceptance, addressed to the President, and dated February 4, 1801, was in these words:

"Sir: I pray you to accept my grateful acknowledgments for the honor conferred on me in appointing me Chief Justice of the United States.

"This additional and flattering mark of your good opinion has made an impression on my mind which time will not efface.

"I shall enter immediately on the duties of the office, and hope never to give you occasion to regret having made this appointment.

"With the most respectful attachment,

"I am, Sir,

"Your obedient servant,

"J. MARSHALL."

On the same day, as is stated on the record of the Supreme Court, his commission as Chief Justice, "bearing date the 31st day of January, A. D. 1801, and of the Independence of the United States the twenty-fifth," was "read in open Court, and the said John Marshall, having taken the oaths prescribed by law, took his seat upon the Bench."

In speaking of one who has been for a hundred years the central and predominant figure in American jurisprudence, little more can be expected, at this day, than to echo what has been better said by others. Almost the whole ground was covered, long ago, by Mr. Binney, in the admirable eulogy delivered before the Councils of the City of Philadelphia on the 24th of September, 1835, the eightieth anniversary of the Chief Justice's birth, and within three months after his death; and by Mr. Justice Story, in the interesting essay, first published in the North American Review in 1828, and again, with some changes, in the American National Portrait Gallery in 1833, and finally developed into his discourse before the Suffolk Bar on the 15th of October, 1835, and containing much information derived from the Chief Justice himself.

In the researches incited by your invitation, my first and most important discovery was a letter from Chief Justice Marshall, dated "Richmond, March 22d, 1818," and addressed to "Joseph Delaplaine, Esq., Philadelphia." Delaplaine was then publishing, in numbers, his Repository of the Lives and Portraits of Distinguished American Characters, which was discontinued soon afterwards, without ever including Marshall. The letter purports to have been written in answer to one "requesting some account of my birth, parentage, &c.," and contains a short autobiography.

My earliest knowledge of the existence of such an autobiography was obtained from a thin pamphlet, published at Columbus, Ohio, in 1848; found in an old bookstore in Boston; and containing (besides Marshall's famous speech in Congress on the case of Jonathan Robbins) only this letter, entitling it "Autobiography of John Marshall." The internal evidence of its genuineness is very strong; and its authenticity is put almost beyond doubt by a facsimile (recently shown me in your State

Library) of a folio sheet in Marshall's handwriting, which, although it contains neither the whole of the letter, nor its address, bears the same date, and does contain the principal paragraph of the letter, word for word, with the corrections of the original manuscript, and immediately followed by his signature.

An autobiography of Marshall is of so much interest, that no apology is necessary for quoting it in full. Except for one or two slips of the pen, corrected in the printed pamphlet, it is as follows:

"I was born on the 24th of September, 1755, in the county of Fauquier in Virginia. My father, Thomas Marshall, was the eldest son of John Marshall, who intermarried with a Miss Markham, and whose parents migrated from Wales, and settled in the county of Westmoreland in Virginia, where my father was born. My mother was named Mary Keith; she was the daughter of a clergyman of the name of Keith who migrated from Scotland, and intermarried with a Miss Randolph on James River. I was educated at home, under the direction of my father, who was a planter, but was often called from home as a surveyor. From my infancy I was destined for the bar; but the contest between the mother country and her colonies drew me from my studies and my father from the superintendence of them; and in September, 1775, I entered into the service as a subaltern. I continued in the army until the year 1781, when, being without a command, I resigned my commission, in the interval between the invasions of Virginia by Arnold and Phillips. In the year 1782, I was elected into the legislature of Virginia; and in the fall session of the same year, was chosen a member of the executive council of that State. In January, 1783, I intermarried with Mary Willis Ambler, the second daughter of Mr. Jacquelin Ambler, then treasurer of Virginia, who was the third son of Mr. Richard Ambler, a gentleman who had migrated from England, and settled at Yorktown in Virginia. In April, 1784, I resigned my seat in the executive council, and came to the bar, at which I continued, declining any other public office than a seat in the legislature, until the year 1797, when I was associated with General Pickney and Mr. Gerry in a mission to France. In 1798, I returned to the

United States; and in the spring of 1799 was elected a member of Congress, a candidate for which, much against my inclination, I was induced to become by the request of General Washington. At the close of the first session, I was nominated, first to the Department of War, and afterwards to that of State, which last office I accepted, and in which I continued until the beginning of the year 1801, when Mr. Ellsworth having resigned, and Mr. Jay having declined his appointment, I was nominated to the office of Chief Justice, which I still hold.

"I am the oldest of fifteen children, all of whom lived to be married, and of whom nine are now living. My father died when about seventy-four years of age; and my mother, who survived him about seven years, died about the same age. I do not recollect all the societies to which I belong, though they are very numerous. I have written no book, except the Life of Washington, which was executed with so much precipitation as to require much correction."

This brief outline of an autobiography, besides its intrinsic value as a whole, is notable in several particulars. It shows that John Marshall was of Welsh, and of Scotch, as well as of English descent; and this through persons who had not recently come over, but had all been in this country long enough to become truly Americans. It attests, over his own hand, that he was educated at home under his father's superintendence and direction, and was destined from infancy for the bar; and also that it was by the request of General Washington, and much against his own inclination, that he was induced to become a candidate for Congress.

Marshall passed his boyhood and early youth in the country, in a healthful climate and beautiful scenery, fond of field sports and athletic exercises, living in a house containing a good English library, the eldest of a large family of children, under the guidance and in the companionship of a father of strong natural abilities, and to whom, as he used to say, he owed the solid foundation of all his own success in life. As Mr. Binney says: "It is the praise and the evidence of the native powers of his mind, that by domestic instruction, and two years of grammatical and classical tuition obtained from other sources, Mr.

Marshall wrought out in after life a comprehensive mass of learning both useful and elegant, which accomplished him for every station that he filled, and he filled the highest of more than one description."

He was licensed to practice law in 1780, and soon became one of the leaders of the bar of Virginia. The Reports of Bushrod Washington and of Daniel Call show that hardly any one argued so many cases before the Court of Appeals of the State.

He was chosen in the spring of 1782 a representative in the legislature of Virginia, and in the fall of the same year a member of the executive council of the State. He also served in the legislature in the years 1784, 1787 to 1792 and 1795.

In the convention of Virginia of 1788 upon the adoption of the Constitution of the United States, Patrick Henry, George Mason and William Grayson were the principal opponents of the Constitution, and James Madison, Governor Randolph, George Nicholas, Edmund Pendleton and John Marshall its leading supporters; and at the close of its proceedings Marshall (then only thirty-three years of age) was made a member, both of the committee to report a form of ratification, and of the committee to report such amendments as by them should be deemed necessary to be recommended; and the only other persons who were on both committees were Randolph, Nicholas and Madison.

Patrick Henry said of him in that convention: "I have the highest veneration and respect for the honorable gentleman; and I have experienced his candour upon all occasions." And ten years after, when Marshall was a candidate for Congress, it being represented that Henry was opposed to him, he wrote and published a letter saying that he should give him his vote for Congress preferably to any citizen of the State, General Washington only excepted.

President Washington offered Marshall the District-Attorneyship for the District of Virginia in 1789, and the Attorney-Generalship, and the mission to France, in 1796. President Adams offered him the office of Associate Justice of the Su-

preme Court in 1798, upon the death of Mr. Justice Wilson, and before appointing Bushrod Washington.

In 1799, Marshall delivered in the House of Representatives the speech vindicating the right and the duty of the President to surrender Jonathan Robbins to the British Government for trial for a murder on a British ship, of which Mr. Binney justly says that it has all the merits, and nearly all the weight of a judicial sentence; and Mr. Justice Story, that it placed him at once in the front rank of constitutional statesmen, and settled then, and forever, the points of national law upon which the controversy hinged.

Mr. Wirt, himself eminent as a lawyer and as an orator, who began the practice of the law but ten years later than Marshall, and who knew him well, both at the bar and on the bench, was so impressed with his style of argument that he returned to it again and again in his letters, which are the more interesting because of the absolute contrast between the two men in that respect.

In the Letters of a British Spy, first published in 1803, speaking of Marshall at the bar, Mr. Wirt said: "This extraordinary man, without the aid of fancy, without the advantages of person, voice, attitude, gesture, or any of the ornaments of an orator, deserves to be considered as one of the most eloquent men in the world; if eloquence may be said to consist in the power of seizing the attention with irresistible force, and never permitting it to elude the grasp until the hearer has received the conviction which the speaker intends." "He possesses one original and almost supernatural faculty: the faculty of developing a subject by a single glance of his mind, and detecting, at once, the very point on which every controversy depends. No matter what the question, though ten times more knotty than 'the gnarled oak,' the lightning of heaven is not more rapid, nor more resistless, than his astonishing penetration. Nor does the exercise of it seem to cost him an effort. On the contrary, it is as easy as vision. I am persuaded that his eyes do not fly over a landscape, and take in its various objects with more promptitude and facility, than his mind embraces, and analyzes the most complex subject. Possessing this intellectual

elevation which enables him to look down and comprehend the whole ground at once, he determines immediately, and without difficulty, on which side the question may be most advantageously approached and assailed. In a bad cause, his art consists in laying his premises so remotely from the point directly in debate, or else in terms so general and so specious, that the hearer, seeing no consequence which can be drawn from them, is just as willing to admit them as not; but his premises once admitted, the demonstration, however distant, follows as certainly, as cogently, as inevitably, as any demonstration in Euclid. All his eloquence consists in the apparently deep self-conviction and emphatic earnestness of his manner; the correspondent simplicity and energy of his style; the close and logical connection of his thoughts; and the easy gradations by which he opens his lights on the attentive minds of his hearers."

Again, in a letter of May 6th, 1806, to Benjamin Edwards, a friend of his youth, Mr. Wirt wrote: "Here is John Marshall, whose mind seems to be little else than a mountain of barren stupendous rocks, an inexhaustible quarry from which he draws his materials and builds his fabrics, rude and gothic, but of such strength that neither time nor force can beat them down; a fellow who would not turn off a single step from the right line of his argument, though a paradise should rise to tempt him."

Once more, on December 20, 1833, within two months of his own death, in a letter of advice to a law student, he wrote: "Learn (I repeat it) *to think—to think deeply, comprehensively, powerfully*—and learn the simple, nervous language which is appropriate to that kind of thinking. Read the legal and political arguments of Chief Justice Marshall, and those of Alexander Hamilton, which are coming out. Read them, *study them;* and observe with what an omnipotent sweep of thought they range over the whole field of every subject they take in hand—and that with a scythe so ample and so keen, that not a straw is left standing behind them."

Before Marshall became Chief Justice, very few cases of constitutional law were decided by the Supreme Court.

The most important one was the case of Chisholm against the State of Georgia, in which it was held in 1793, by Chief

Justice Jay and his associates, Mr. Justice Iredell dissenting, that the Supreme Court had original jurisdiction of an action brought against a State by a citizen of another State. That decision proceeded upon the ground that such was the effect of the Constitution, established by the people in their sovereign capacity. But it was inconsistent with the view which had been maintained by Marshall in the Virginia convention of 1788; and it was presently, as the Supreme Court has since said, reversed and overruled by the people themselves, in the Eleventh Amendment of the Constitution, which declared that "the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State."

Two cases from the Virginia Circuit were argued at Philadelphia, in February, 1796, before Justices Cushing, Wilson, Paterson and Chase, just before the appointment of Chief Justice Ellsworth. In one of them, Ware against Hylton, the case of the British debts, Marshall was of counsel against the debts, and the court held them to be protected by the treaty of peace. In the other, Hylton against the United States, in which the court upheld the constitutionality of the carriage tax, Marshall is said by Judge Tucker to have been of counsel against the tax in the Circuit Court; and Mr. Wirt, in a letter to Francis W. Gilmer of November 2, 1818, more than twenty years after, spoke of Marshall as having argued this case in Philadelphia; but Mr. Wirt probably had in mind the case of the British debts.

John Marshall was Chief Justice of the United States for more than thirty-four years, from his taking the oath of office on February 4th, 1801, to his death on July 6th, 1835.

After his accession, the changes in the membership of the Supreme Court became much less frequent than they had been during the earlier years of the court. Of the Associate Justices on the bench at the time of his appointment, Moore continued to serve for three years; Paterson for nearly five years; Cushing and Chase for nearly eleven years; and Bushrod Washington for nearly twenty-nine years. William Johnson, appointed on the resignation of Moore in 1804, served thirty years, dying

within a year before Chief Justice Marshall; Livingston, appointed on the death of Paterson in 1806, served sixteen years; Todd, appointed in 1807, (under an act of Congress increasing the number of Associate Justices to six,) nineteen years; and Duvall, appointed in 1811, on the death of Chase, twenty-three years, resigning in January, 1835. Story, also appointed in 1811, on the death of Cushing, served nearly thirty-four years; and Thompson, appointed in 1823, on the death of Livingston, twenty years. Trimble, appointed in 1826, on the death of Todd, died in little more than two years; and McLean, appointed in his place in 1829, served thirty-two years. Justices Story, Thompson and McLean remained on the bench at the time of Chief Justice Marshall's death. The other Associate Justices at that time were Baldwin, appointed in 1830, on the death of Bushrod Washington; and Wayne, appointed January 5th, 1835, in the place of William Johnson.

Chief Justice Marshall's conduct in regard to the appointment of some of his associates is worthy of mention.

On the death of Mr. Justice Trimble in 1828, President John Quincy Adams offered his place to Henry Clay, who declined it, and (as Mr. Adams states in his dairy) "read me a letter from Chief Justice Marshall, speaking very favorably of J. J. Crittenden to fill the office of Judge of the Supreme Court, but declining to write to me." Crittenden was nominated by President Adams, but was not confirmed by the Senate.

In January, 1835, upon the resignation of Mr. Justice Duvall, President Jackson nominated Roger B. Taney as Associate Justice in his place. While the nomination was pending before the Senate, Chief Justice Marshall wrote a note to Mr. Leigh, then a Senator from Virginia, in these terms: "If you have not made up your mind on the nomination of Mr. Taney, I have received some information in his favor which I would wish to communicate." Taney's nomination as Associate Justice was indefinitely postponed by the Senate; but within a year afterwards, upon the death of Chief Justice Marshall, he was nominated and confirmed as Chief Justice of the United States.

Before Marshall's appointment, the practice appears to have been for all the justices to deliver their opinions *seriatim*—a

practice which tends to bring into prominence the subordinate points of view in which they differ, and to obscure the principal point on which they agree; and, while it sometimes makes the report of the case more interesting, tends to impair its weight as a precedent for the determination of future controversies. Under Marshall, all subordinate differences seem to have been settled in conference, or at any rate less often displayed to the public; and the opinion of the court was usually delivered by one justice, and in the majority of important, and especially of constitutional cases, by Marshall himself. During his time there were few dissenting opinions.

The only constitutional case in which Chief Justice Marshall dissented from the judgment of the court was Ogden against Saunders in 1827, which was decided by a bare majority of the court against the opinion of Marshall, Duvall and Story. But in Boyle against Zacharie in 1832, notwithstanding a change in the membership of the court, Marshall declared that the principles established in the former opinion were to be considered no longer open for controversy.

Chief Justice Marshall, as appears by letters from him to his associates on April 18, 1802, was originally of opinion that the justices of the Supreme Court could not hold Circuit Courts without distinct commissions as circuit judges. But in Stuart against Laird in 1803, apparently deferring to the opinions of his associates, he acted as circuit judge; and the Supreme Court, in an opinion delivered by Mr. Justice Paterson, affirmed his judgment, upon the ground that practice and acquiescence for several years, commencing with the organization of the judicial system, had fixed the construction beyond dispute.

Marshall's judicial demeanor is best stated in the words of an eye witness. Mr. Binney, who had been admitted to the bar of the Supreme Court in 1809, and who had often practiced before him, tells us:

"He was endued by nature with a patience that was never surpassed — patience to hear that which he knew already, that which he disapproved, that which questioned himself. When he ceased to hear, it was not because his patience was exhausted, but because it ceased to be a virtue.

"His carriage in the discharge of his judicial business was faultless. Whether the argument was animated or dull, instructive or superficial, the regard of his expressive eye was an assurance that nothing that ought to affect the cause was lost by inattention or indifference; and the courtesy of his general manner was only so far restrained on the bench as was necessary for the dignity of office, and for the suppression of familiarity.

"His industry and powers of labor, when contemplated in connection with his social temper, show a facility that does not generally belong to parts of such strength."

"To qualities such as these, he joined an immovable firmness befitting the office of presiding judge in the highest tribunal of the country. It was not the result of excited feeling, and consequently never rose or fell with the emotions of the day. It was the constitution of his nature, and sprung from the composure of a mind undisturbed by doubt, and of a heart unsusceptible of fear."

"In him his country have seen that triple union of lawyer, statesman, and patriot, which completes the frame of a great constitutional judge."

He had not the technical learning in the common law of Coke, or of several of Coke's successors. But, in the felicitous words of Mr. Justice Story, "he seized, as it were by intuition, the very spirit of juridical doctrines, though cased up in the armor of centuries; and he discussed authorities, as if the very minds of the judges themselves stood disembodied before him."

He had not the learning of Nottingham or of Hardwicke in the jurisdiction and practice of the court of chancery, or of Mansfield in the general maritime law. But his judgments show that he was a master of the principles of equity, and of commercial law.

He had not the elegant scholarship of Stowell. But it is not too much to say that his judgments in prize causes exhibit a broader and more truly international view of the law of prize. Upon the question of the exemption of ships of war and some other ships, it was observed by Lord Justice Brett in the Eng-

lish Court of Appeal in 1880, "the first case to be carefully considered is, and always will be, *The Exchange*," decided by Chief Justice Marshall in 1812.

The jurisdiction of the court over which he presided was not confined to one department or branch of the law; it included common law, equity, maritime law, the law of admiralty and prize, and, in some degree, the civil law of Spain and of France.

Beyond all this, the jurisdiction of his court extended to constitutional law, in a more comprehensive sense than ever belonged to the courts of any other country.

In England, there is no law of higher sanction than an act of Parliament; and Parliament has uncontrolled power to change or to repeal even Magna Charta. It is otherwise in this country.

One of the earliest and most important judgments of Marshall is Marbury against Madison, decided in 1803, in which the paramount obligation of the Constitution over all ordinary statutes was declared and established by a course of reasoning which may be indicated by a few extracts from the opinion.

"The Constitution is either a superior paramount law, unchangeable by ordinary means; or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law; if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

"Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the Constitution, is void. This theory is essentially attached to a written constitution, and is consequently to be considered by this court as one of the fundamental principles of our society."

"It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret that

rule. If two laws conflict with each other, the courts must decide on the operation of each. So if a law be in opposition to the Constitution; if both the law and the Constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the Constitution; or conformably to the Constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty. If, then, the courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply."

"The particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the Constitution is void; and that *courts*, as well as other departments, are bound by that instrument."

In the light of experience, it is curious to look back upon the doubt and apprehension entertained by some of the Northern Federalists with regard to Marshall shortly before he became Chief Justice. For instance, on the 29th of December, 1799, when he had just entered the House of Representatives, Oliver Wolcott, then Secretary of the Treasury under President Adams, wrote to Fisher Ames: "He is doubtless a man of virtue and distinguished talents; but he will think much of the State of Virginia, and is too much disposed to govern the world according to rules of logic; he will read and expound the Constitution as if it were a penal statute, and will sometimes be embarrassed with doubts of which his friends will not perceive the importance."

Why should he not "think much of the State of Virginia?" What State of the Union had produced such a galaxy of great men? And what American, worthy of the name, does not cherish a peculiar affection for the State of his birth and his home? But such an affection for one's own State is by no means incompatible with a paramount allegiance and devotion to the United States as one's country. There is no more striking illustration of this truth than Chief Justice Marshall himself.

It was upon writs of error to the highest court of Virginia in which a decision in the case could be had—at first in 1816, in the case of Martin against Hunter's Lessee, a case between private individuals; and afterwards in 1821, in the case of Cohens against Virginia, a criminal prosecution instituted by the State—that the Supreme Court, under the lead of Chief Justice Marshall, upheld and established its appellate jurisdiction under the Constitution and the Judiciary Act, to review the judgment of the State court against a right claimed under the Constitution or the laws of the United States. In the first case, indeed, perhaps because it came from his own State, he allowed Mr. Justice Story to draw up the opinion of the court. But in the second case he himself expressed the unanimous conclusion of the court in one of his most elaborate and most powerful judgments.

The idea that he would "read and expound the Constitution as if it were a penal statute" seems now almost ludicrous. Take, for instance, his judgments in the cases of McCulloch against Maryland in 1819, and of Wiltberger in 1820. In Wiltberger's case, he clearly stated the reasons and the limits of the rule that penal statutes are to be construed strictly. But in McCulloch's case, when dealing with the question what powers may be implied from the express grants to Congress in the Constitution, he said: "A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could hardly be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. That this idea was entertained by the framers of the American Constitution, is not only to be inferred from the nature of the instrument, but from the language. Why else were some of the limitations, found in the ninth section of the first article, introduced? It is also, in some degree, warranted by their having omitted to use any restrictive term which

might prevent its receiving a fair and just interpretation. In considering this question, then, we must never forget, that it is *a constitution* we are expounding."

In McCulloch's case, after full discussion, he thus defined the rule: "We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." "Where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the government, to undertake here to inquire into the decree of its necessity would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretensions to such a power."

Among his other greatest judgments are United States against Peters, on the sanctity of judgments of the courts of the United States; Fletcher against Peck, and Dartmouth College against Woodward, that a grant by a State is a contract, the obligation of which cannot afterwards be impaired; Gibbons against Ogden, and Brown against Maryland, on the paramount nature of the power of Congress to regulate commerce with foreign nations and among the several States; Sturges against Crowninshield, on the power of the States to pass insolvent laws; and Osborn against the Bank of the United States, on the subject of suits by the Bank of the United States.

But he gave due weight to the decisions of the courts of the several States, saying, in Elmendorf against Taylor: "This court has uniformly professed its disposition, in cases depending on the laws of a particular State, to adopt the construction which the courts of the State have given to those laws. This course is founded on the principle, supposed to be universally

recognized, that the judicial department of every government, where such department exists, is the appropriate organ for construing the legislative acts of that government. Thus, no court in the universe, which professed to be governed by principle, would, we presume, undertake to say that the courts of Great Britain, or of France, or of any other nation, had misunderstood their own statutes, and therefore erect itself into a tribunal which should correct such misunderstanding. We receive the construction given by the courts of the nation as the true sense of the law, and feel ourselves no more at liberty to depart from that construction, than to depart from the words of the statute. On this principle, the construction given by this court to the Constitution and laws of the United States is received by all as the true construction; and on the same principle, the construction given by the courts of the several States to the legislative acts of those States is received as true, unless they come in conflict with the Constitution, laws or treaties of the United States."

In the cases of Bollman and Swartwout in the Supreme Court, and in the trial of Aaron Burr in this Circuit, he set bounds to the doctrine of constructive treasons. As showing the pains taken by the Chief Justice, it may be interesting to note, what is not generally known, that on June 29th, 1807, after the indictments had been found against Burr and others, and more than a month before the trial, he wrote letters to each of his associates, asking their opinions upon questions of law that would arise, and saying: "I am aware of the unwillingness with which a judge will commit himself by an opinion on a case not before him, and on which he has heard no argument. Could this case be readily carried into the Supreme Court, I would not ask an opinion in its present stage. But these questions must be decided by the judges separately on their respective circuits, and I am sure there would be a strong and general repugnance to giving contradictory decisions on the same points. Such a circumstance would be disreputable to the judges themselves, as well as to our judicial system. This consideration suggests the propriety of a consultation on new and difficult subjects, and will, I trust, apologize for this letter."

His letters to Mr. Justice Story show that he often consulted him on admiralty cases pending in the Circuit Court.

One is apt to forget that Mr. Justice Story was originally a Democrat, and was appointed to the court by James Madison, a Democratic President. He soon became a devoted adherent of Chief Justice Marshall, and fully recognized his leadership.

In an article in the North American Review in 1828, he wrote: "We resume the subject of the constitutional labors of Chief Justice Marshall. We emphatically say of Chief Justice Marshall; for though we would not be unjust to those learned gentlemen who have from time to time been his associates on the bench, we are quite sure that they would be ready to admit, what the public universally believe, that his master mind has presided in their deliberations, and given to the results a cogency of reasoning, a depth of remark, a persuasiveness of argument, a clearness and elaboration of illustration, and an elevation and comprehensiveness of conclusion, to which none others offer a parallel. Few decisions upon constitutional questions have been made, in which he has not delivered the opinion of the court; and in these few, the duty devolved upon others to their own regret, either because he did not sit in the cause, or from motives of delicacy abstained from taking an active part."

Five years later, in dedicating his Commentaries on the Constitution of the United States to Chief Justice Marshall, Mr. Justice Story said: "When I look back upon your judicial labors during a period of thirty-two years, it is difficult to suppress astonishment at their extent and variety, and at the exact learning, the profound reasoning and the solid principles which they everywhere display. Other judges have attained an elevated reputation by similar labors, in a single department of jurisprudence. But in one department, (it need scarcely be said that I allude to that of constitutional law,) the common consent of your countrymen has admitted you to stand without a rival. Posterity will assuredly confirm, by its deliberate award, what the present age has approved as an act of undisputed justice."

Upon two important points in which decisions made in Chief Justice Marshall's time have been since overruled, the later decisions are in accord with the opinions which he finally entertained.

The court, in 1809, in opinions delivered by him, decided that a corporation aggregate could not be a citizen, and could not litigate in the courts of the United States, unless in consequence of the character of its members, appearing by proper averments upon the record. In Louisville Railroad Company against Letson, in 1844, those decisions were overruled; and it appears by the opinion of the court, as well as by a letter from Mr. Justice Story to Chancellor Kent of August 31st, 1844, that Chief Justice Marshall had become satisfied that the early decisions were wrong.

In the case of The Thomas Jefferson in 1825, it was decided by a unanimous opinion of the court, delivered by Mr. Justice Story, that the jurisdiction of the courts of admiralty of the United States was limited by the ebb and flow of the tide. But an article published in the New York Review for October, 1838, by one who was evidently intimate with Chief Justice Marshall, tells us: "He said, (and he spoke of it as one of the most deliberate opinions of his life,) at a comparatively late period, that he had always been of opinion that we in America had misapplied the principle upon which the admiralty jurisdiction depended—that in England the common expression was, that the admiralty jurisdiction extended only on tide waters, and as far as the tide ebbed and flowed; and this was a natural and reasonable exposition of the jurisdiction in England, where the rivers were very short, and none of them navigable from the sea beyond the ebb and flow of the tide—that such a narrow interpretation was wholly inapplicable to the great rivers of America; that the true principle, upon which the admiralty jurisdiction in America depended, was to ascertain how far the river was navigable from the sea; and that consequently, in America, the admiralty jurisdiction extended upon our great rivers not only as far as the tide ebbed and flowed in them, but as far as they were navigable from the sea; as, for example, on the Mississippi and its branches, up to the falls of the Ohio. He also thought that our great lakes at the west were not to be considered as mere inland lakes, but were to be deemed inland navigable seas, and as such were subject, or ought to be subject, to the same jurisdiction." He thus foreshadowed the decision

made in 1851 in the case of The Genesee Chief, by which the decision in The Thomas Jefferson was explicitly overruled.

Among the most interesting records of the impression made by Chief Justice Marshall upon his contemporaries are entries written presently after his death (although not published until much later) in the diary of John Quincy Adams, who was then sixty-eight years old; had been a member of either House of Congress; charged with many a diplomatic mission abroad; Secretary of State throughout the administration of President Monroe, and himself President of the United States; had long before been an active member of the bar of the Supreme Court, and had declined the appointment of Associate Justice, offered him by President Madison before he appointed Mr. Justice Story; and who, as his diary shows, was not given to indiscriminate or excessive laudation.

In that diary, under date of July 10th, 1835, Mr. Adams wrote: "John Marshall, Chief Justice of the United States, died at Philadelphia last Monday, the 4th instant. He was one of the most eminent men that this country has ever produced. He has held this appointment thirty-five years. It was the last act of my father's administration, and one of the most important services rendered by him to his country. All constitutional governments are flexible things; and as the Supreme Judicial Court is the tribunal of last resort for the construction of the Constitution and the laws, the office of Chief Justice of that court is a station of the highest trust, of the deepest responsibility, and of influence far more extensive than that of the President of the United States. John Marshall was a Federalist of the Washington school. The Associate Judges from the time of his appointment have generally been taken from the Democratic or Jeffersonian party." "Marshall, by the ascendency of his genius, by the amenity of his deportment, and by the imperturbable command of his temper, has given a permanent and systematic character to the decisions of the court, and settled many great constitutional questions favorably to the continuance of the Union."

In the same diary, again, a month later, Mr. Adams wrote: "The office of Chief Justice requires a mind of energy sufficient to influence generally the minds of a majority of his associates;

to accommodate his judgment to theirs, or theirs to his own; a judgment also capable of abiding the test of time and of giving satisfaction to the public. It requires a man profoundly learned in the law of nations, in the commercial and maritime law, in the civil law, in the common law of England, and in the general statute laws of the several States of the Union. With all these powers steadily exercised during a period of thirty-four years, Chief Justice Marshall has settled many questions of constitutional law, certainly more than all the Presidents of the United States together."

The late Mr. Justice Bradley, after a distinguished service of nearly twenty years on the bench of the Supreme Court, wrote in 1889 of Chief Justice Marshall as follows: "It is needless to say that Marshall's reputation as a great constitutional judge is peerless. The character of his mind and his previous training were such as to enable him to handle the momentous questions, to which the conflicting views upon the Constitution gave rise, with the soundest logic, the greatest breadth of view, and the most far-seeing statesmanship. He came to the bench with a reputation already established—the reputation not only of a great lawyer, but of an eminent statesman and publicist." "It may truly be said that the Constitution received its final and permanent form from the judgments rendered by the Supreme Court during the period in which Marshall was at its head. With a few modifications, superinduced by the somewhat differing views on two or three points of his great successor, and aside from the new questions growing out of the late civil war and the recent constitutional amendments, the decisions made since Marshall's time have been little more than the application of the principles established by him and his venerated associates."

"The American Constitution as it now stands," says Mr. James Bryce, in his book on The American Commonwealth, "is a far more complete and finished instrument than it was when it came fire-new from the hands of the Convention. It is not merely their work, but the work of the judges, and most of all of one man, the great Chief Justice Marshall." "His work of building up and working out the Constitution was accomplished

not so much by the decisions he gave, as by the judgments in which he expounded the principles of these decisions, judgments which for their philosophical breadth, the luminous exactness of their reasoning, and the fine political sense which pervades them, have never been surpassed and rarely equalled by the most famous jurists of modern Europe or of ancient Rome." "He grasped with extraordinary force and clearness the cardinal idea that the creation of a national government implies the grant of all such subsidiary powers as are requisite to the effectuation of its main powers and purposes; but he developed and applied this idea with so much prudence and sobriety, never treading on purely political ground, never indulging the temptation to theorize, but content to follow out as a lawyer the consequences of legal principles, that the Constitution seemed not so much to rise under his hands to its full stature, as to be gradually unveiled by him till it stood revealed in the harmonious perfection of the form which its framers had designed."

The very greatness and completeness of the work of Chief Justice Marshall tends to prevent our appreciating how great it was.

He was a great statesman, as well as a great lawyer, and yet constantly observed the distinction between law, as judicially administered, and statesmanship.

The Constitution of the United States created a nation upon the foundation of a written constitution; and, as expounded by Marshall, transferred in large degree the determination of the constitutionality of the acts of the legislature or the executive from the political to the judicial department.

Marshall grew up with the Constitution. He served in the legislature of Virginia before and after its adoption, and in the convention of Virginia by which it was ratified. He took part in its administration, abroad and at home, in a foreign mission, in the House of Representatives, and in the Department of State, before he became the head of the judiciary, within a quarter of a century after the Declaration of Independence, and less than twelve years after the Constitution was established.

During the thirty-four years of his Chief Justiceship he ex-

pounded and applied the Constitution, in almost every aspect, with unexampled sagacity, courage and caution.

He had an intuitive perception of the real issue of every case, however complicated, and of the way in which it should be decided.

His manner of reasoning was peculiarly judicial. It was simple, direct, clear, strong, earnest, logical, comprehensive, demonstrative, starting from admitted premises, frankly meeting every difficulty, presenting the case in every possible aspect, and leading to philosophical and profoundly wise conclusions, sound in theory and practical in result. He recognized that, next to a right decision, it was important that reasons for the decision should be fully stated so as to satisfy the parties and the public. And it may be said of him, as Charles Butler, in his Reminiscences, says of Lord Camden, that he sometimes "rose to sublime strains of eloquence; but their sublimity was altogether in the sentiment; the diction retained its simplicity, and this increased the effect."

It was in the comparatively untrodden domain of constitutional law, in bringing acts of the legislature and of the executive to the test of the fundamental law of the Constitution, that his judicial capacity was preëminently shown. Deciding upon legal grounds, and only so much as was necessary for the disposition of the particular case, be constantly kept in mind the whole scheme of the Constitution. And he answered all possible objections with such fulness and such power as to make his conclusions appear natural and inevitable.

The principles affirmed by his judgments have become axioms of constitutional law. And it is difficult to overestimate the effect which those judgments have had in quieting controversies on constitutional questions, and in creating or confirming a sentiment of allegiance to the Constitution, as loyal and devoted as ever was given to any sovereign.

You will, I hope, forgive me one personal anecdote. While I had the honor to be Chief Justice of Massachusetts, I was a guest of a Boston merchant at a dinner party of gentlemen, which included Mr. Bartlett, then the foremost lawyer of Massachusetts, and one of the leaders at the bar of the Supreme

Court of the United States. In the course of the dinner, the host, turning to me, asked, "How great a judge was this Judge Marshall, of whom you lawyers are always talking?" I answered, "The greatest judge in the language." Mr. Bartlett spoke up, "Is not that rather strong, Chief Justice?" I rejoined, "Mr. Bartlett, what do you say?" After a moment's pause, and speaking with characteristic deliberation and emphasis, he replied: "I do not know but you are right."

A service of nearly twenty years on the bench of the Supreme Court has confirmed me in this estimate. We must remember that, as has been well said by an eminent advocate of our own time, Mr. Edward J. Phelps, in speaking of Chief Justice Marshall: "The test of historical greatness—the sort of greatness that becomes important in future history—is not great ability merely. It is great ability, combined with great opportunity, greatly employed." None other of the great judges of England or of America ever had the great opportunity that fell to the lot of Marshall.

John Marshall, during his term of office as Chief Justice, undertook no other public employment, except that, at the beginning of that term, and at the particular request of President John Adams, he continued to hold the office of Secretary of State for the last month of his administration; and that, at seventy-four years of age, and after having been Chief Justice twenty-eight years, he was persuaded to serve as a member of the Virginia convention of 1829–30 to revise the constitution of the State.

At the time of becoming a member of that convention, he wrote to Mr. Justice Story an amusingly apologetic letter, dated Richmond, June 11th, 1829, in which he said: "I am almost ashamed of my weakness and irresolution, when I tell you that I am a member of our convention. I was in earnest when I told you that I would not come into that body, and really believed that I should adhere to that determination; but I have acted like a girl addressed by a gentleman she does not positively dislike, but is unwilling to marry. She is sure to yield to the advice and persuasion of her friends." I assure you I regret being a member, and could I have obeyed the dictates of my own judg-

ment I should not have been one. I am conscious that I cannot perform a part I should wish to take in a popular assembly; but I am like Molière's *Médecin Malgré Lui*."

Mr. Grigsby tells us that "he spoke but seldom in the convention, and always with deliberation," and that "an intense earnestness was the leading trait of his manner." Some remarks of his on the judicial tenure may fitly be quoted, without comment.

Strenuously upholding, as essential to the independence of the judiciary, the tenure of office during good behavior, he said: "I have grown old in the opinion, that there is nothing more dear to Virginia, or ought to be dearer to her statesmen, and that the best interests of our country are secured by it. Advert, Sir, to the duties of a judge. He has to pass between the government and the man whom that government is prosecuting: between the most powerful individual in the community, and the poorest and most unpopular." "Is it not, to the last degree, important that he should be rendered perfectly and completely independent, with nothing to influence or control him but God and his conscience? You do not allow a man to perform the duties of a juryman or a judge, if he has one dollar of interest in the matter to be decided; and will you allow a judge to give a decision when his office may depend upon it? When his decision may offend a powerful and influential man?" "And will you make me believe that if the manner of his decision may affect the tenure of that office, the man himself will not be affected by that consideration?" "I have always thought, from my earliest youth till now, that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people was an ignorant, a corrupt, or a dependent judiciary."

The question of the weight, as a precedent, of the act of Congress of 1802, abolishing the circuit judgeships created by Congress in 1801, having been discussed by other members of the convention, and Chief Justice Marshall's opinion having been requested, he said, "that it was with great, very great repugnance, that he rose to utter a syllable upon the subject. His reluctance to do so was very great indeed; and he had, throughout the previous debates on this subject, most carefully

avoided expressing any opinion whatever upon what had been called a construction of the Constitution of the United States by the act of Congress of 1802. He should now, as far as possible, continue to avoid expressing any opinion on that act of Congress. There was something in his situation, which ought to induce him to avoid doing so. He would go no farther than to say, that he did not conceive the Constitution to have been at all definitively expounded by a single act of Congress. He should not meddle with the question, whether a course of successive legislation should or should not be held as a final exposition of it; but he would say this—that a single act of Congress, unconnected with any other act by the other departments of the Federal Government, and especially of that department more especially entrusted with the construction of the Constitution in a great degree, when there was no union of departments, but the legislative department alone had acted, and acted but once, even admitting that act not to have passed in times of high political and party excitement, could never be admitted as final and conclusive."

A discussion of the merits of his Life of Washington would be out of place on this occasion. But I may mention having been favored with a sight of his letter of November 25th, 1833, accepting the Presidency of the Washington National Monument Society, in which he said: "You are right in supposing that the most ardent wish of my heart is to see some lasting testimonial of the grateful affection of his country erected to the memory of her first citizen. I have always wished it, and have always thought that the metropolis of the Union was the first place for this national monument."

His letter to Delaplaine, containing the autobiography already quoted, contains another passage too characteristic to be omitted: "I received also a letter from you, requesting some expression of my sentiments respecting your repository, and indicating an intention to publish in some conspicuous manner the certificates which might be given by Mr. Wirt and myself. I have been ever particularly unwilling to obtain this kind of distinction, and must insist on not receiving it now. I have, however, no difficulty in saying, that your work is one in which the

nation ought to feel an interest, and I sincerely wish it may be encouraged, and that you may receive ample compensation for your labor and expense. The execution is, I think, in many respects praiseworthy. The portraits, an object of considerable interest, are, so far as my acquaintance extends, good likenesses; and the printing is neatly executed with an excellent type. In the characters there is of course some variety. Some of them are drawn with great spirit and justice; some are, perhaps, rather exaggerated. There is much difficulty in giving living characters, at any rate until they shall have withdrawn from the public view." And Mr. Wirt, then Attorney General, wrote a similar letter November 5th, 1818, to Delaplaine.

Marshall was, like Lord Camden and other eminent judges, a great reader of novels. On November 26th, 1826, he wrote to Mr. Justice Story that he had just finished reading Miss Austen's novels, and was much pleased with them, saying: "Her flights are not lofty, she does not soar on eagle's wings, but she is pleasing, interesting, equable and yet amusing."

To his latest years, he retained his love of country life, and his habits of exercise in the open air. He continued to own the family place in Fauquier County, where he had passed his boyhood, and usually visited it in the summer. And he had another farm three or four miles from Richmond, and often walked out or in.

Mr. Binney, in his sketches of the Old Bar of Philadelphia, incidentally mentions: "After doing my best, one morning, to overtake Chief Justice Marshall in his quick march to the Capitol, when he was nearer to eighty than to seventy, I asked him to what cause in particular he attributed that strong and quick step; and he replied that he thought it was most due to his commission in the army of the Revolution, in which he had been a regular foot practitioner for nearly six years."

You would not forgive me, were I to omit to mention the Quoit Club, or Barbecue Club, which for many years used to meet on Saturdays at Buchanan's Spring in a grove on the outskirts of Richmond. The city has spread over the place of meeting, the spring has been walled in and the grove cut down, and the memories of the club are passing into legend.

THE MARSHALL CENTENNIAL.

According to an account preserved in an article on Chief Justice Marshall in the number for February, 1836, of the Southern Literary Messenger, (which I believe has always been considered as faithfully recording the sentiments and the traditions of Virginia), the Quoit Club was coëval with the Constitution of the United States, having been organized in 1788 by thirty gentlemen, of whom Marshall was one; and it grew out of informal fortnightly meetings of some Scotch merchants to play at quoits. Who can doubt that, if those Scotchmen had only introduced their national game of golf, the Chief Justice would have become a master of that game?

There are several picturesque descriptions of the part he took at the meetings of the Quoit Club. It is enough to quote one, perhaps less known than the others, in which the artist, Chester Harding, visiting Richmond during the session of the State convention of 1829–30, when the Chief Justice was nearly seventy-five years old, and the last survivor of the founders of the Club, tells us: "I again met Judge Marshall in Richmond, whither I went during the sitting of the convention for amending the constitution. He was a leading member of a quoit club, which I was invited to attend. The battle-ground was about a mile from the city, in a beautiful grove. I went early, with a friend, just as the party were beginning to arrive. I watched for the coming of the old chief. He soon approached with his coat on his arm, and his hat in his hand, which he was using as a fan. He walked directly up to a large bowl of mint-julep, which had been prepared, and drank off a tumbler full of the liquid, smacked his lips, and then turned to the company with a cheerful 'How are you, gentlemen?' He was looked upon as the best pitcher of the party, and could throw heavier quoits than any other member of the club. The game began with great animation. There were several ties; and, before long, I saw the great Chief Justice of the Supreme Court of the United States down on his knees, measuring the contested distance with a straw, with as much earnestness as if it had been a point of law; and if he proved to be in the right, the woods would ring with his triumphant shout."

THE MARSHALL CENTENNIAL.

In the summer and autumn of 1831, the Chief Justice had a severe attack of stone, which was cured by lithotomy, performed by the eminent surgeon, Dr. Physick, of Philadelphia, in October, 1831. Another surgeon, who assisted at the operation, tells us that his recovery was in a great degree owing to his extraordinary self-possession, and to the calm and philosophical views which he took of his case, and of the various circumstances attending it. Just before the operation, he wrote to Mr. Justice Story: "I am most earnestly attached to the character of the department, and to the wishes and convenience of those with whom it has been my pride and my happiness to be associated for so many years. I cannot be insensible to the gloom which lowers over us. I have a repugnance to abandoning you under such circumstances, which is almost invincible. But the solemn convictions of my judgment, sustained by some pride of character, admonish me not to hazard the disgrace of continuing in office a mere inefficient pageant." He concluded by saying that he had determined to postpone until the next term the question whether he should resign his office. After the operation, he wrote: "Thank Heaven, I have reason to hope that I am relieved. I am, however, under the very disagreeable necessity of taking medicine continually to prevent new formations. I must submit, too, to a severe and most unsociable regimen. Such are the privations of age." He continued to perform the duties of his office, with undiminished powers of mind, for nearly four years more, and ultimately died, in his eightieth year, of a disease of a wholly different character, an enlarged condition of the liver.

There are many testimonies to his great modesty, self-effacement and true humility, in any company, whether of friends or of strangers. Let me quote but one, recently made known to me by the kindness of the President of your Supreme Court of Appeals, (a kinsman of Chief Justice Marshall,) and which, with his permission, is given in his own words: "I have an aunt in Fauquier county, Miss Lucy Chilton, now in her ninety-first year. I asked her on one occasion if she had known Judge Marshall. She replied that she had spent weeks at a time in the same house with him. I then asked her what trait or

characteristic most impressed her. She replied without hesitation: 'His humility. He seemed to think himself the least considered person in whatever company he chanced to be.'" This quality in him may help us to understand the saying, that the great lawgiver and judge of the Hebrews — who, we are told, "was learned in all the wisdom of the Egyptians, and was mighty in words and in deeds" — was "very meek, above all men which were upon the face of the earth."

Chief Justice Marshall was a steadfast believer in the truth of Christianity, as revealed in the Bible. He was brought up in the Episcopal Church; and Bishop Meade, who knew him well, tells us that he was a constant and reverent worshipper in that church, and contributed liberally to its support, although he never became a communicant. All else that we know of his personal religion is derived from the statements (as handed down by the good bishop) of a daughter of the Chief Justice, who was much with him during the last months of his life. She said that her father told her he never went to bed without concluding his prayer by repeating the Lord's Prayer and the verse beginning, "Now I lay me down to sleep," which his mother had taught him when he was a child; and that the reason why he had never been a communicant was that it was but recently that he had become fully convinced of the divinity of Christ, and he then "determined to apply for admission to the communion of our church — objected to commune in private, because he thought it his duty to make a public confession of the Saviour — and, while waiting for improved health to enable him to go to the church for that purpose, he grew worse and died, without ever communing."

His private character cannot be more felicitously or more feelingly summed up than in the resolutions drawn up by Mr. Leigh, and unanimously adopted by the Bar of this Circuit, soon after the death of the Chief Justice: "His private life was worthy of the exalted character he sustained in public station. The unaffected simplicity of his manners; the spotless purity of his morals; his social, gentle, cheerful disposition; his habitual self-denial, and boundless generosity towards others; the strength and constancy of his attachments; his

kindness to his friends and neighbors; his exemplary conduct in the relations of son, brother, husband, father; his numerous charities; his benevolence towards all men, and his ever active beneficence; these amiable qualities shone so conspicuously in him, throughout his life, that, highly as he was respected, he had the rare happiness to be yet more beloved."

Let me add a few words from the address of Mr. William Maxwell before the Virginia Historical and Philosophical Society on March 2d, 1836, preserved in the Southern Literary Messenger: "He came about amongst us, like a father amongst his children, like a patriarch amongst his people—like that patriarch whom the sacred Scriptures have canonized for our admiration—'when the eye saw him, it blessed him; when the ear heard him, it gave witness to him; and after his words men spake not again.'"

The earliest and most lifelike description that we have of his face and figure is one given by the kinsman who was present on the occasion, already mentioned, of his taking command of a militia company in 1775, when not quite twenty years of age: "He was about six feet high, straight and rather slender; of dark complexion, showing little if any rosy red, yet good health; the outline of the face nearly a circle, and, within that, eyes dark to blackness, strong and penetrating, beaming with intelligence and good nature; an upright forehead, rather low, was terminated in a horizontal line by a mass of raven-black hair of unusual thickness and strength; the features of the face were in harmony with this outline, and the temples fully developed; the result of this combination was interesting and very agreeable. The body and limbs indicated agility rather than strength, in which, however, he was by no means deficient." A few words more may be quoted, completing the picture: "He wore a purple or pale-blue hunting-shirt, and trousers of the same material fringed with white. A round black hat, mounted with the bucks-tail for a cockade, crowned the figure and the man."

"This is a portrait to which," adds Mr. Binney, "in everything but the symbols of the youthful soldier, and one or two of those lineaments which the hand of time, however gentle,

changes and perhaps improves, he never lost his resemblance. All who knew him well will recognize its truth to nature."

Of all the portraits by various artists, that which best accords with the above description, especially in the "eyes dark to blackness, strong and penetrating, beaming with intelligence and good nature," is one by Jarvis, (perhaps the best American portrait painter of his time, next to Stuart,) which I have had the good fortune to own for thirty years, and of which, before I bought it, Mr. Middleton, then the clerk of the Supreme Court, who had been deputy clerk for eight years under Chief Justice Marshall, wrote me: "It is an admirable likeness; better than the one I have, which has always been considered one of the best." This portrait was taken while his hair was still black, or nearly so; and, as shown by the judicial robe, and by the curtain behind and above the head, was intended to represent him as he sat in court.

The most important of the later portraits are those painted by Harding in 1828–30, and by Inman in 1831, with a graver expression of countenance, with the hair quite gray, and with deep lines in the face.

Harding's portraits were evidently thought well of, by the subject, as well as by the artist. One of them, afterwards bequeathed by Mr. Justice Story to Harvard College, was sent to him by the Chief Justice in March, 1828, with a letter saying, "I beg you to accept my portrait, for which I sat in Washington to Mr. Harding, to be preserved when I shall sleep with my fathers, as a testimonial of sincere and affectionate friendship;" and in the same letter he gave directions for paying Harding "for the head and shoulders I have bespoke for myself." Harding's principal portrait of Marshall was painted in 1830 for the Boston Athenæum, in whose possession it still is; it has the advantage of being a full length, showing that in his seventy-fifth year he retained the erect and slender figure of his youth; and the artist wrote of it in his autobiography: "I consider it a good picture. I had great pleasure in painting *the whole* of such a man."

Inman's careful portrait, in the possession of the Philadelphia

Law Association, has often been engraved, and is perhaps the best known of all.

The crayon portrait in profile, drawn by St. Memim in 1808, which has always remained in the family of the Chief Justice, and been considered by them an excellent likeness, and is now owned by a descendant in Baltimore; the bust by Frazee, bequeathed by Mr. Justice Story to Harvard College, and familiarly known by numerous casts; and that executed by Powers, by order of Congress, soon after the Chief Justice's death, for the Supreme Court Room—all show that, while his hair grew rather low on the forehead, his head was high and well shaped, and that, as was then not unusual, he wore his hair in a queue.

His dress, as shown in the full length portrait by Harding, and as described by his contemporaries, was a simple and appropriate, but by no means fashionable, suit of black, with knee breeches, long stockings, and low shoes with buckles.

You may think, my friends, that I have been led on to spend too much time in endeavoring to bring before you the bodily semblance of the great Chief Justice. Yet you must admit, as he did in his letter to Delaplaine, that portraits of eminent men are "an object of considerable interest."

But, after all, it is not the personal aspect of a great man, it is his intellect and his character, that have a lasting influence on mankind. *Ut vultus hominum, ita simulacra vultus imbecilla ac mortalia sunt. Forma mentis æterna; quam tenere et exprimere, non per alienam materiam et artem, sed tuis ipse moribus possis.*

Brethren of the Bar of the Old Dominion; Fellow-citizens of the United States:

To whatsoever professional duty or public office we may any of us be called, we can find, in the long line of eminent judges with whom Almighty Providence has blessed our race, no higher inspiration, no surer guide, than in the example and in the teachings of JOHN MARSHALL.

SUPREME COURT DECISIONS REFERRED TO.

Bank of United States *v.* Deveaux (1809) 5 Cranch, 61.
Bollman & Swartwout, ex parte (1807) 4 Cranch, 75.
Boyle *v.* Zacharie (1832) 6 Peters, 348, 635.
Brown *v.* Maryland (1827) 12 Wheaton, 419.
Chisholm *v.* Georgia (1793) 2 Dallas, 419.
Cohens *v.* Virginia (1821) 6 Wheaton, 264.
Dartmouth College *v.* Woodward (1819) 4 Wheaton, 518.
Elmendorf *v.* Taylor (1825) 10 Wheaton, 152.
The Exchange (1812) 7 Cranch, 116.
Fletcher *v.* Peck (1810) 6 Cranch, 87.
The Genesee Chief (1851) 12 Howard, 443.
Gibbons *v.* Ogden (1824) 9 Wheaton, 1.
Hans *v.* Louisiana (1890) 134 United States, 1.
Hollingsworth *v.* Virginia (1798) 3 Dallas, 378.
Hope Insurance Company *v.* Boardman (1809) 5 Cranch, 57.
Hylton *v.* United States (1796) 3 Dallas, 171.
Louisville Railroad Company *v.* Letson (1844) 2 Howard, 497.
McCulloch *v.* Maryland (1819) 4 Wheaton, 316.
Marbury *v.* Madison (1803) 1 Cranch, 137.
Martin *v.* Hunter's Lessee (1816) 1 Wheaton, 304.
Ogden *v.* Saunders (1827) 12 Wheaton, 213.
Osborn *v.* Bank of United States (1824) 9 Wheaton, 738.
Stuart *v.* Laird (1803) 1 Cranch, 299.
Sturges *v.* Crowninshield (1819) 4 Wheaton, 122.
The Thomas Jefferson (1825) 10 Wheaton, 428.
United States *v.* Peters (1809) 5 Cranch, 115.
——— ——— *v.* Wiltberger (1820) 5 Wheaton, 76.
Ware *v.* Hylton (1796) 3 Dallas, 199.

AUTHORITIES CONSULTED, OTHER THAN SUPREME COURT DECISIONS.

Adams, John. Works, vol. ix. Boston, 1854.
Adams, John Quincy. Memoirs, vols. viii, ix. Philadelphia, 1876.
Binney, Horace. Eulogy on Marshall. Philadelphia, 1835.
——— ——— Old Bar of Philadelphia. p. 83. Philadelphia, 1859.
Bradley, Joseph P. St. Memim's Portrait of Marshall. Century Magazine of September, 1889. New York, 1889.
Bryce, James. The American Commonwealth. London, 1888.

THE MARSHALL CENTENNIAL.

Burr, Aaron. Trial. Robertson's Report. Philadelphia, 1808.

Butler, Charles. Reminiscences. vol. i, (4th ed.) p. 133. London, 1824.

Carson, Hampton L. The Supreme Court of the United States (2d ed.) Philadelphia, 1892.

Cooley, Thomas M. The Federal Supreme Court. Lecture at University of Michigan in 1889. New York, 1890.

Flanders, Henry. Lives of the Chief Justices. Philadelphia, 1881.

Gibbs, George. Administrations of Washington and John Adams, vol. ii, p. 314. New York, 1846.

Grigsby, Hugh B. Discourse on Virginia Convention of 1829–30. Richmond, 1853.

Harding, Chester. Autobiographical Sketch. Cambridge, 1866. Boston, 1890.

Henry, Patrick. Life by Willian Wirt Henry. New York, 1891.

Hitchcock, Henry. Constitutional Development of the United States as influenced by Marshall. Lecture at University of Michigan in 1889. New York, 1890.

Hopkinson, Joseph. Memoir of Marshall. Brockenbrough's Reports of Marshall's Decisions in Circuit Court, vol. i, p. ix. Philadelphia, 1837.

Jay, John. Life of William Jay. New York, 1833.

—— ——— Life by George Pellew. Boston, 1890.

Law Reports, Probate Division. vol. v, pp. 197, 208. London, 1880.

Magruder, Allan B. Life of Marshall. Boston, 1885.

Marshall, John. Letters to John Adams. In possession of Adams Family at Quincy. MSS.

Letters to William Cushing. In possession of General Charles J. Paine of Boston. MSS.

Letter to James Delaplaine. Columbus, Ohio; published by J. H. Riley & Co., 1848.

Letters to Joseph Story. Massachusetts Historical Society Proceedings. November, 1900.

Life of Washington. Philadelphia, 1804–7; (2d ed.) Philadelphia, 1833.

Speech in Congress on Case of Jonathan Robbins. Philadelphia, 1800. Wheaton's Reports of Cases in Supreme Court, vol. v, appendix; New York, 1820.

Meade, William. Old Churches and Families of Virginia. vol. 1, p. 30; vol. ii, pp. 216–224. Philadelphia, 1872.

New York Review. Article on Marshall. vol. iii, p. 328. New York, 1838.

Phelps, Edward J. Address on Marshall. Philadelphia, 1879. American Bar Association Reports, vol. ii.

Physick, Philip S. Memoir by S. Randolph, M. D. pp. 96–101. Philadelphia, 1839.

Rawle, William H. Oration on Unveiling of Marshall's Statue. United States Reports, vol. cxii, appendix.

THE MARSHALL CENTENNIAL.

Senate Executive Journal, 1789–1837. Washington, 1828–87.

Southern Literary Messenger. Articles on Marshall. vol. ii, pp. 183, 258, 260, 317. Richmond, 1836.

State Department. Commissions. 1789–1836. MSS.

Story, Joseph. Article on Marshall. North American Review of January, 1828. Boston, 1828.

Biography of Marshall. National Portrait Gallery of Distinguished Americans, vol. i, pt. iii. Philadelphia, 1833–34. Story's Miscellaneous Writings; Boston, 1835.

Commentaries on the Constitution of the United States. Boston, 1833.

Discourse on Marshall. Boston, 1835. Story's Miscellaneous Writings; Boston, 1852.

Life and Letters by William W. Story. Boston, 1851.

Taney, Roger B. Life by Samuel Tyler. Baltimore, 1872.

Tucker, St. George. Edition of Blackstone's Commentaries. vol. i, pt. i, appendix, p. 294. Philadelphia, 1803.

Van Santvoord, George. Lives of the Chief Justices, (2d ed.) Albany, 1882.

Virginia Bar. Resolutions on Marshall's Death. Brockenbrough's Reports of Marshall's Decisions in Circuit Court, vol. i, p. xvii. Philadelphia, 1837.

Virginia Convention on Federal Constitution, 1788. Petersburg, 1788. 3 Elliot's Debates, (2d ed.) Washington, 1836.

—— ———— on State Constitution, 1829–30. pp. 616, 619, 871, 872. Richmond, 1830.

Waite, Morrison R. Address on Unveiling of Marshall's Statue. United States Reports, vol. cxii, appendix.

Washington, George. Writings. (Sparks's ed.) vol. x; Boston, 1836. (Ford's ed.) vol. xi; New York, 1891.

Wirt, William. Letters of a British Spy. Richmond, 1803; (10th ed.) New York, 1832.

Life by John P. Kennedy. Philadelphia, 1849.

III. PROCEEDINGS IN PARKERSBURG.

These were similar to those which took place in Washington and Richmond. At the request of the West Virginia Bar Association an address was delivered before the Society on John Marshall day by Mr. Justice Brown; but he declined to allow its publication.